SUPREME COURT OF THE UNITED STATES.

No. 149.

THE BOARD OF PRESIDENT AND DIRECTORS OF THE SAINT LOUIS PUBLIC SCHOOLS, PLAINTIFFS IN ERROR.

VS.

ISAAC WALKER AND PATRICK RYAN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

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The United States of America to Isaac Walker and Patrick Ryan, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the State of Missouri, wherein the Board of President and Directors of the St. Louis Public Schools are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable David Wagner, Chief Justice of the Supreme Court of Missouri, this 24th day of April, in the year of our Lord one thousand eight hundred and sixty-seven.

DAVID WAGNER,
Presiding Judge Sup. Ct. Mo.
JAMES TAUSSIG,
Att'y for Plaintiffs in Error.

UNITED STATES OF AMERICA, *Eastern District of Missouri, ss:*

Executed the within writ by reading the same to the within-named Isaac Walker and Patrick Ryan, at Saint Louis, Mo., in said district, on the fifth day of June, A. D., 1867.

J. B. ROGERS,
U. S. Marshal Eastern District of Mo.

Marshal's fees, 2 services..... $4 00

1 STATE OF MISSOURI, *ss*:

Be it remembered, that on the first day of October, one thousand eight hundred and sixty-four, there was filed in the office of the clerk of the Supreme Court, held at St. Louis, of the State of Missouri, a transcript of the record and proceedings in a certain cause lately pending in the St. Louis Land Court, in the State aforesaid; which transcript is in the words and figures following, to wit:

Writ of Error.

THE STATE OF MISSOURI, *ss*:

The State of Missouri to the honorable the judge of the Saint Louis Land Court in said State, greeting:

Whereas, in the record and proceedings in a certain cause lately pending in the said court, wherein the Board of President and Directors of the St. Louis Public Schools were plaintiffs and Isaac Walker and Patrick Ryan were defendants in a civil action, manifest error hath intervened to the great damage of said plaintiffs, as by their complaint we are informed:

Now, being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid in that behalf, command you that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said court, so that we may have them before us at our Supreme Court, to be begun and held in the city of St, Louis, in the county of St. Louis, in said State, on the third Monday in October next, so that our judges of our Supreme Court, on inspecting the records and proceedings aforesaid, may cause to be further done therein for correcting the error, what of right and according to law ought to be done.

Witness Andrew W. Mead, clerk of our said Supreme Court, at office, in the city of St. Louis, the 9th day of September, in the year of our Lord one thousand eight hundred and sixty-four.

[SEAL.] A. W. MEAD, *Clerk.*

$10; paid by Att'y Taussig.

(Upon the back of which writ, the following endorsement appeared.)

We admit service of a notice of the within writ of error.

St. Louis, Sep., 1864.

GLOVER & SHEPLEY & TODD,
Att'ys for Def'ts in Error.

STATE OF MISSOURI, *County of St. Louis, ss*:

I, Robert White, clerk of the St. Louis Land Court, within and for the county aforesaid, in obedience to the mandate of the within writ, herewith transmit to the honorable Supreme Court of the State of Missouri, held at St. Louis, a full, true, and complete transcript of the record and proceedings in the within-entitled cause, as fully as the same remain of record and on file in my office.

In testimony whereof I hereunto set my hand and affix the seal of said court, at office, in the city of St. Louis, this first day of October, 1864.

[SEAL.] ROBERT WHITE, *Clerk.*
By CHAS. LEVY, *D. C.*

[5-ct. stamp.]

STATE OF MISSOURI, *County of St. Louis, ss*:

Be it remembered, that on the ninth day of February, in the year of our Lord one thousand eight hundred and sixty-four, there was filed in the office of the clerk of the St. Louis Land Court, a petition; which petition is in the words and figures following, to wit:

4 In the St. Louis Land Court, March Term, 1864.

Petition.

THE BOARD OF PRESIDENT AND DIRECTORS OF the St. Louis Public Schools, plaintiffs,
against
ISAAC WALKER AND PATRICK RYNE, defendants.

STATE OF MISSOURI, *County of St. Louis, ss*:

The plaintiffs, a body corporate and politic, established by the laws of this State, most respectfully state, that on the first day of January, 1864, they were, and still are, lawfully entitled to the immediate possession of the following-described premises within United States survey number four hundred and seven, of the series of St. Louis lands, in the city of St. Louis, and in the county of St. Louis, and State of Missouri, to wit: A piece or parcel of land, bounded by a line commencing where the most northern boundary line of said survey intersects with the west line of Carondelet avenue, and running from thence along the said northern line of said survey, north seventy degrees and ten minutes west, seven hundred and fifty-four feet and four inches, to the most northwestern corner of said survey, where said northern line of said survey intersects with the eastern line of the St. Louis common; thence along the western
5 boundary line of said survey, south thirty degrees and forty-five minutes west, seven hundred and forty feet and five inches to a corner; thence [thence] south along said western boundary line of said survey, thirty-three feet to the northern line of Barton street; thence eastward along said northern line of said Barton street, seven hundred and forty-five feet more or less, to the west line of Carondelet avenue; thence northward along the west line of Carondelet avenue, seven hundred and sixty-nine feet and nine inches, to the place of beginning, and bounded on the eastward by Carondelet avenue; on the northward by said northern line of said survey; on the westward by the said western line of said survey, and on the southward by the northern line of Barton street, containing fifteen acres more or less, and being so entitled to possession thereof, that the said defendants, afterwards, on the second day of January, 1864, unlawfully entered into the said premises, and are now, at the time of the commencement of this suit, in the possession of said premises, and unlawfully withhold from the said plaintiffs the possession thereof, to their damages the sum of five thousand dollars.

The plaintiffs therefore ask for judgment against the defendants for the possession of said premises, for said damages, and for costs of suit, and the plaintiffs also ask for such other, further,
6 and general relief in the premises, as they be lawfully entitled to.

E. CASSELBERRY,
Attorney for the Plaintiffs.

STATE OF MISSOURI, *County of St. Louis, ss:*

Isaiah Forbes, the agent of the foregoing mentioned plaintiffs, and the president of the board of directors of said plaintiffs, makes oath, and says the foregoing petition and the matters therein as stated he believes to be true.

ISAIAH FORBES, *President.*

Subscribed and sworn to before me this ninth day of February, 1864.

Witness my hand and notarial seal.

[SEAL.] M. C. JENNINGS, *Notary Public.*

Upon the filing of the above petition, the clerk then issued to the sheriff of St. Louis county a summons; which summons is in the words and figures following, to wit:

Summons.

COUNTY OF ST. LOUIS, *ss:*

The State of Missouri to the sheriff of St. Louis county, greeting:

We command you to summon Isaac Walker and Patrick Ryne to appear before the judge of our St. Louis Land Court, on the first day of the next term thereof, to be held in the city of St. Louis, within and for the county of St. Louis, on the second Monday of March next, then and there to answer the complaint of the Board of President and Directors of the St. Louis Public Schools, as set forth in the annexed petition, and have you then and there this writ.

Witness Robert White, clerk of our said court, with the seal thereof hereto affixed, at office, in the city of St. Louis, this 10th day of February, in the year of our Lord eighteen hundred and sixty-four.

[SEAL.] ROBERT WHITE, *Clerk.*
By E. P. WALSH, *D. C.*

[U. S. stamp.]

Upon which summons the sheriff made his return in the words and figures following, to wit:

Sheriff's return.

Executed this writ in the county of St. Louis, on the 18th day of February, 1864, by delivering a copy of the writ and petition as furnished by the clerk to Isaac Walker.

JOHN C. VOGEL, *She'ff.*
By JAMES OWENS, *Dep'ty.*

Further executed this writ in the county of St. Louis, on the 19th day of Feb'y, 1865, by delivering a copy of the writ as furnished by the clerk to Patrick Ryne.

JOHN C. VOGEL, *Sheriff.*
JACOB L. WEYAND, *Dep.*

8 And afterwards the following further proceedings were had in this cause, to wit:

March term, 1864.

Answer filed in this cause.

FRIDAY, *March* 18*th*, 1864.

THE BOARD OF PRESIDENT AND DIRECTORS of the St. Louis Public Schools
vs.
ISAAC WALKER *et al.*

Which answer is in the words and figures following, to wit:

In the St. Louis Land Court.

Answer.

THE BOARD OF PRESIDENT AND DIRECTORS of the St. Louis Public Schools
vs.
ISAAC WALKER & PATRICK RYAN

The said defendants, for answer to said petition, deny that the said plaintiff is entitled to the possession of the land described in said petition, or that they unlawfully entered upon said land, or unlawfully withhold the same from plaintiff, or that plaintiff is entitled to any damages.

TODD & GLOVER & SHEPLEY, *for Def'ts.*

Isaac Walker, being duly sworn, on his oath, states that said answer, and the matters and things as therein stated, he believes to be true.

ISAAC WALKER.

Sworn to and subscribed this 18th day of March, 1864.

9 ROBERT WHITE, *Clerk.*
By E. P. WALSH, *D. C.*

And afterwards, to wit, at the same term, the following further proceedings were had in this cause, to wit:

Trial by court begun and cont.

THE BOARD OF PRESIDENT AND DIRECTORS of the St. Louis Public Schools
vs.
ISAAC WALKER AND PATRICK RYNE.

FRIDAY, *June* 10*th*, 1864.

Now at this day, come said parties, by their respective attorneys, and thereupon this cause coming on to be heard, and a jury having heretofore been waived, this cause is tried by the court upon the

pleadings, evidence, and proofs adduced, and the evidence being terminated, it is ordered that the cause be continued for argument on Monday, June 13th, 1864.

And afterwards, to wit, at the same term, the following further proceedings were had in this cause, to wit:

Judgment.

THE BOARD OF PRESIDENT AND DIRECTORS of the St. Louis Public Schools
vs.
ISAAC WALKER AND PATRICK RYNE.

THURSDAY, *June* 16, 1864.

And now again, at this day, came said parties, by their respective attorneys, and the court being now fully advised of and concerning the premises in this cause heretofore submitted to the court, doth, from the evidence and proofs adduced, find the issues herein for the defendants. It is therefore ordered and adjudged by the court that the plaintiff take nothing by its suit in this behalf, but that the defendants go hence without day, and recover of said plaintiffs their costs and charges herein expended and have execution therefor.

And afterwards, to wit, on the same day, the following further proceedings were had in this cause, to wit:

Motion to set aside judgment and for new trial filed in this cause.

THE BOARD OF PRESIDENT AND DIRECTORS of the St. Louis Public Schools
vs.
ISAAC WALKER *at al.*

(For which motion to set aside judgment, and for new trial, see bill of exceptions. Clerk.)

And afterwards to wit, at the same term, the following further proceedings were had in this cause, to wit:

Mo. for new trial overruled.

MONDAY, *June 20th*, 1864.

THE BOARD OF PRESIDENT AND DIRECTORS of the St. Louis Public Schools
vs.
ISAAC WALKER *et al.*

Now, at this day, the court being fully advised of and concerning the premises in the motion heretofore filed in this cause to set aside judgment and for a new trial, doth order and adjudge that said motion be overruled.

And afterwards, to wit: on the same day, the following further proceedings, were had in this cause, to wit:

Bill of exc'ps filed.

THE BOARD OF PRESIDENT AND DIRECTORS of the St. Louis Public Schools,
vs.
ISAAC WALKER, *et al.*

Bill of exceptions filed in this cause.

Which bill of exceptions is in the words and figures following, to wit:

In the St. Louis Land Court, March term, 1864.

BOARD OF PRESIDENT AND DIRECTORS of St. Louis Public Schools,
vs.
ISAAC WALKER AND PATRICK RYAN.

Be it remembered, that on this 14th day of June, 1864, the following proceedings were had in the above-entitled cause.

Both parties declaring themselves ready for trial and waiving a jury, the cause was tried by the court.

12 Plaintiff gave in evidence—

1. Certified copy of an order of the Common Pleas Court, incorporating the town of St. Louis, dated November 9th 1809.

In the St. Louis Court of Common Pleas.

Or. of Com. Pleas Ct. incorpor'g St. Louis.

NOVEMBER 9*th*, 1809.

On petition of sundry inhabitants of the town of St. Louis, praying so much of said town as is included in the following limits, be incorporated, to wit: Beginning at Antonio Roye's mill on the bank of Mississipp; thence running six arpens west; thence south on said line of sixty arpens in the rear until the same comes to the Prairie des Noyers; thence due south until it comes to the Sugar Loaf; thence due east to the Mississippi, to the place first mentioned. The court having examined the said petition, and finding that the same is signed by two-thirds of the taxable inhabitants residing in said town, order the same to be incorporated, and the metes and bounds to be surveyed and marked, and a plat thereof filed of record in the clerk's office. And David Delamany and William C. Carr are appointed commissioners to superintend the first election of five trustees in pursuance of law.

STATE OF MISSOURI, *County of St. Louis, ss*:

13 I hereby certify the foregoing to be a true copy of the decree, incorporating the town (now city) of St. Louis, as fully as the same remains on record in my office, in book "A," pages 334 and 335.

Witness my hand and the seal of Circuit Court this 21st day of October, A. D. 1862.

[SEAL.] STEPHEN RICE, *Clerk.*

2. Certified copy of the survey of the out-boundary line of the town of St. Louis, commonly known as map X.

3. A paper marked "Assignment to the schools," being survey No. 407.

Assignment to schools survey No. 407.

OFFICE OF THE SURVEYOR GENERAL
FOR ILLINOIS AND MISSOURI,
Saint Louis, June 3rd, 1861.

The piece of land herein platted and described, containing 30.20 acres situate in township 45, north of the base line range 7, east of the 5th principal meridian, in the State of Missouri has been legally surveyed; and under the instructions from the commissioner of
14 the General Land Office, dated June 28th, 1860, it is hereby designated and set apart to the town (now city) of St. Louis, for the support of schools therein, in conformity with the second section of the act of Congress, approved the 26th May, 1824, entitled "An act supplementary to an act passed on the thirteenth day of June, one thousand eight hundred and twelve," entitled "An act making further provisions for settling the claims to land in the Territory of Missouri." The said piece of land hereby designated and set apart as aforesaid, is situated within the bounds of the survey directed to be made by the first section of the act of the 13th June, 1812, entitled, "An act making further provision for settling the claims to land in the Territory of Missouri," so as to include the town lots, out lots, common field lots, and common of the town of Saint Louis, and is also within the limits of the said town of Saint Louis, as it stood incorporated on the 13th day of June, 1812, and does not, together with all other lands designated and set apart to the town of Saint Louis, for the support of schools under the aforesaid second section of the act of Congress of the 26th day of May 1824, amount to one-twentieth of the whole lands included in the general survey directed to be made of said town of St. Louis by the aforesasd first section of the act of Congress of the 13th day of June, 1812. The said piece of land was not, so far as the records of this office show,
15 rightfully owned or claimed by any private individual on the said thirteenth day of June, 1812; nor was it held as common belonging to the said town of St. Louis; neither has it been reserved by the President of the United States for military purposes. This survey is numbered 407, of the series of St. Louis lands.

[Here follows map marked page 15.]

16 *Description.*

Beginning at a point in the western boundary of Joseph Brazeau's survey, numbered two hundred and ninety-eight, the south east corner of Madame Choteau's survey, numbered one thousand eight hundred and twenty-seven, and a corner of this survey; thence north seventy degrees and ten minutes west, with the southern boundary of the Madame Choateau survey, at seventy-eight links a large cedar post, the north-east corner of survey numbered three thousand and seventy-seven, in the name of Pierre Francois Devolsey, or his legal representatives, and at twelve chains and twenty-one links a post in the eastern boundary of Saint Louis common, survey numbered three thousand one hundred and twenty-five, corner of this survey, from which a mulberry three inches in diameter bears south thirteen degrees and forty-five minutes, west forty-four and a half links distant, and a plum tree three inches in diameter bears south twenty-one degrees, west forty-four links distant; thence south thirty degrees and forty-five minntes, west with the eastern boundary of the Saint Louis common, eleven chains and twenty-two links to a post in the line between sections twenty-six and twenty seven
17 corner of this survey, from which a plum tree twoand a half inches in diameter bears east sixty-seven links distant, and a and a thorn two and a half inches in diameter bear south eighty-one degrees and fifteen minutes, east seventy-one links distant.

Thence south, with the line between sections twenty-six and twenty-seven, at six chains and eighty-two links, a stone sixteen inches long, six inches wide, four inches thick, set at the intersection with the south boundary of the Pierre Francois Devolsey survey, at eleven chains and forty-two links, a stone at the intersection with the south boundary of survey numbered three thousand and seventy-eight, in the name of Joseph Brazeau or his legal representatives, at twelve chains and ninety-nine links, a stone at the intersection with the north boundary of survey numbered three thousand one hundred and twenty-one, in the name of Nicholas Barsaloux or his legal representatives; at fourteen chains and ninety links, a stone seventeen inches long, about five inches wide and four inches thick, set for the corner to sections twenty-six, twenty-seven, thirty-four, and thirty-five, from which a red oak bush two and a half inches in diameter bears north thirty seven degrees and thirty minutes west, twenty links distant, and a hickory bush two and a half inches in diameter bears south sixty-seven degrees west, four and a half links distant, and continuing the same course, with the line between
18 sections thirty-four and thirty-five, at twenty-two chains and sixty-nine links, a stone in the eastern boundary of the Nicholas Barsaloux survey, corner of this survey.

Thence south twenty-eight degrees and thirty minutes west, with the eastern boundary of the Nicholas Barsaloux survey, two chains and ninety-six links to a stone twenty-nine inches long, fourteen inches wide, four inches thick, projecting four inches above the ground, the southeast corner of the Nicholas Barsaloux survey, a corner to

survey numbered three thousand one hundred and eighty-six, in the name of Sylvester Labbadie or his legal representatives, and also a corner of this survey, from which a black oak eight inches in diameter bears north sixty degrees east twenty-nine links distant, and a black oak five inches in diameter bears north sixty degrees and thirty minutes west, forty-two links distant.

Thence south forty-nine degrees west, with a line of the Sylvester Labbadie survey, four chains and ninety-one links, to a lime stone, eighteen inches long, eight and a half inches wide, four inches thick, set nine inches into the ground, marked with a cross on the top; the most southern corner of the Sylvester Labbadie survey and a corner to this survey, from which a red oak six inches in diameter
19 bears south twelve [twelve] degrees east ninety-three links distant, and a red oak six inches in diameter bears south seventy-six degrees east one hundred and twenty-one links distant.

Thence south seventy degrees and fifteen minutes east with the northern boundary of a school tract designated as survey numbered three hundred and seventy-one, two chains and twenty-two links to a limestone fourteen inches long, twelve inches wide, three inches thick, set eight inches into the ground, with the edges facing north seventy degrees west, and south seventy degrees east, in a line of survey numbered ninety-nine, in the name of Silas Bent under Godeau and Motard, the most eastern corner of said survey numbered three hundred and seventy-one, and a corner of this survey, from which a hickory four inches in diameter bears south twenty degrees west fifty links distant, and a black oak ten inches in diameter bears south seventy-four degrees west seventy-nine links distant.

Thence north fifty-one degrees and fifteen minutes east, with a line of the Silas Bent survey, two chains and eighty-three and a half links, to a limestone eighteen inches long, fourteen inches wide, seven inches thick, set twelve inches into the ground, marked with a cross on the top, corner of this and of the Silas Bent sur-
20 veys, from which a black jack twelve inches in diameter bears north forty-six degrees east, twenty-seven links distant.

Thence north twenty-eight degrees east, with a line of the Silas Bent survey, five chains to a lime stone, twenty-four inches long, thirteen inches wide, six inches thick; set twelve inches into the ground, marked with a cross on the top, the most northern corner of the Silas Bent survey, the southwest corner of survey numbered three thousand one hundred and eighty-five in the name of Benito Vasquez or his legal representatives, and a corner of this survey from which a locust nine inches in diameter bears south twenty-six degrees and thirty minutes west eighty-two links distant.

Thence north twenty-nine degrees and fifteen minutes east, with the western boundary of the Benito Vasquez survey; at ten chains and ten links a point, the southwest corner of survey numbered three hundred and thirty-two, in the name of Joseph Brazeau under Benito Vasquez; and at sixteen chains, a stone, the northwest corner of surveys numbered three hundred and thirty-two and three thousand one hundred and eighty-five, and the southwest corner of survey num-

bered two hundred and ninety-eight, and also a corner to this survey.

21 Thence north twenty-eight degrees and forty-five minutes east, with the west boundary of survey numbered two hundred and ninety-eight, seventeen chains and four links to the beginning corner.

WM. CUDDY,
Surveyor General.

NOTE. A certified duplicate of the foregoing document was transmitted to the President of the Board of Directors of the St. Louis Public Schools, on the 4th June, 1861, and was on the same day accepted by said board.

ORFICE OF THE SURVEYOR GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, July 25th, 1863.

I hereby certify that the foregoing is a full, true, complete, and correct copy of the whole and every part of the caption, plat, description and field notes of survey, No. 407, of St. Louis lands, as the same remains of record in this office.

WM. CUDDY,
Surveyor General.

[U. S. stamp.]

4. An act of the general assembly of the State of Missouri, entitled "An act to establish corporation for public education, etc." Approved Feb'ry 13th, 1833.

Act of 1833, *of Missouri, to establish a corporation for public education.*

Sec. 1. *Be it enacted by the general assembly of the State*
22 *of Missouri*, That all free white persons residing within the limits of the city of St. Louis, as the same now are, or hereafter may be established by the law, are hereby constituted a body politic and corporate by name and style of the Board of President and Directors of the "St. Louis Public Schools," and by that name they and their successors shall be known in law, have perpetual succession, sue and be sued, impleade and be impleaded, defend and be defended, in all courts of law and equity, and in all actions whatever; may purchase, receive and hold property, real and personal; and may lease, sell or dispose of the same, and may do all other acts as natural persons; they shall have a common seal, and may break and alter the same at pleasure.

Sec. 2. *Be it further enacted*, That the powers of the corporation hereby established, shall be vested in a president and directors, who shall be free white males, at least twenty-one years of age, and have resided at least twelve months previously to their election in the said city, and who shall be a citizen of the United States, and have paid a city tax, and who shall be chosen and appointed, as hereinafter directed.

Sec. *Be it further enacted*, That the board of president and
23 directors shall consist of two members to be elected in each

ward of said city, as the same now are, or hereafter may be established; and the first election shall be held by the same judges, on the same day and at the same time and place, in each of the wards of the city as the election of mayor and aldermen of said city; but no mayor or aldermen of the city shall at the same time be a member of the board. And no person shall vote in the choice of the said directors, who is not a free white male person over the age of twenty-one years, and hath resided at least twelve months previously to their election in the said city, and who shall be a citizen of the United States, and have paid a city tax.

SEC. 4. *Be it further enacted*, That the board of directors shall elect one of their own members to be president, and the said board of president and directors shall have power to judge of the qualifications, elections, and returns of the members; to prescribe the time, place, and manner of conducting the elections of members of said board in the several wards of said city; to compel the attendance of absent members on the meetings of the board; to punish members for disorderly conduct at the board, and by the concurrence of two-thirds of all the members elected expel a member, but not a
24 second time for the same offence; to make rules for the government of their own proceedings; to have charge and control of the public schools, and all the property appropriated to the use of public schools within the said city; and shall have power to make all rules, ordinances, and statutes, proper for the government and management of such schools and property, so that the same shall not be incons'tent with the laws of the land, and generally to do all lawful acts which may be proper or convenient to carry into effect the objects of this corporation.

SEC. 5. *Be it further enacted*, That the members of the board of directors shall be elected for the term of three years and until their successors shall be duly elected and qualified, and one-third of the number shall go out of office at the end of every year, and for that purpose the board shall cause its members to be divided by lot into three classes, as nearly equal as possible. The first class shall go out of office at the end of one year, the second at the end of two, and the third at the end of three years, so that one-third of the board shall be elected every year. And when the establishment of new wards in the city shall require the election of new members of the board, such newly elected member shall be classed accordingly.

25 SEC. 6. *Be it further enacted*, That there shall be four stated meetings of the board in every year, the times and places of which shall be prescribed by resolution or ordinance of the board; and the president, or any three members of the board, may call special meetings by giving one week's notice in writing to the other members of the board; and in all meetings of the board, a majority of the whole number elected shall constitute a quorum to do business; but any smaller number may adjourn from day to day, and compel the attendance of absent members.

SEC. 7. *Be it further enacted*, That whenever a vacancy shall

happen at the board by death, expulsion, resignation, or removal from the city of any member, the same shall be filled by an election in the proper ward, to be held and conducted in such time, place, and manner as shall be prescribed by the board.

SEC. 8. *Be it further enacted*, That the board shall appoint a treasurer and secretary, and such other servants and agents as to them shall seem necessary to accomplish the great objects of the corporation, and prescribe their powers, duties, obligations, and compensation. They shall cause a true and faithful record to be
26 kept of all the acts and proceedings of the board, and shall lay the same before the general assembly, or either house thereof, whenever required, and shall lay the same before a general meeting of the inhabitants of the city whenever one hundred of the qualified electors of the board shall, by written application to the board, require the same to be done. And for that purpose the said board shall have power to call a general meeting of the inhabitants of the city. And the said board of president and directors shall, at least once in every year, cause to be printed and published a true statement of the condition of the public schools under their charge, and of all property under their controul, and a true and fair account of all the money concerns of the corporation.

SEC. 9. *Be it further enacted*, That it shall be the duty of the said board, as soon as conveniently may be, to take the possession, charge, and controul of all the lands or lots in or near the city of St. Louis, which have been either received for or granted to the inhabitants of St. Louis for school purposes by any act of the Congress of the United States, and to dispose of and apply the same to the purpose of education, under the provisions of this act. And to that end the title to all such lands and lots (as far as this general assembly
27 can controul the same) is hereby vested in the corporation hereby created.

SEC. 10. *Be it further enacted*, That it shall be lawful for the said board to cause the deposition of witnesses to be taken, touching the title, locality, boundaries, or extension of any of the lands, lots, or real estate aforesaid; and the manner of taking such depositions shall be conformable to the provisions of the act entitled An act directing the mode of perpetuating testimony in this State, passed Jan. 22, 1825, except that the application for the commission or dedimus need not be supported by any oath or affidavit, provided that any person or persons claiming property in any of the said lands, lots, or real estate, may, upon complying with the requirements of the last-mentioned act, proceed to take depositions in relation thereto; and all such depositions taken on either side, as aforesaid, shall be filed in the office of the clerk of the Circuit Court of St. Louis county, and the same, or authentic copies thereof, shall be legal evidence, and may be read in testimony in any suit in which they may be relevant in any court in this State.

SEC. 11 *Be it further enacted*, That the members of the board, and the treasurer and secretary, shall, before entering upon the discharge of their duties, take an oath before some judge, or
28 justice of the peace, well and faithful to perform the same.

SEC. 12. *Be it further enacted*, That in all legal proceedings against the said corporation it shall be a sufficient service of the writ, declaration, notice or other process, to deliver a copy of the same to the president, or copies to any two members of the board.

SEC. 13. *Be it further enacted*, That this act shall be deemed and taken as a public statute, and may be read and used in all courts and places, as other public laws are, without proof. And all the statutes, ordinances, resolutions and other corporate acts of this corporation may be proven in all courts and places, either by a sworn copy thereof, or by a copy certified by the president or secretary, and authenticated by the seal of the corporation. And the general assembly reserves to itself the power to alter or repeal this act whenever it shall appear to have failed in accomplishing the great objects for which it is passed.

SEC. 14. *Be it further enacted*, That the act entitled "An act to incorporate a board of trustees for superintending schools, in
29 the town of St. Louis, passed by the legislature of the Territory of Missouri, approved on the 30th day of January, 1817, be, and the same is hereby, repealed.

Approved February 13th, 1833.

5. An act of Congress approved January 27th, 1831, entitled:

Act of Congress apro'd Jan'y 27th, 1831.

An act further supplemental to the act entitled "An act making further provision for settling the claims to land in the Territory of Missouri," passed the thirteenth day of June, one thousand eight hundred and twelve.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the United States do hereby relinquish to the inhabitants of the several towns or villages of Portage des Sioux,, Saint Charles, Saint Louis, Saint Ferdinand, Villa a Robert, Carondelet, Saint Genevieve, New Madrid, New Bourbon, and Little Prairie in the State of Missouri, all the right, title, and interest of the United States in and to the town or village lots, out lots, common field lots, and commons in, adjoining, and belonging to the said towns or villages, confirmed to them respectively by the first section of the act of Congress, entitled "An act
30 making further provision for settling the claims to land in the Territory of Missouri," passed the thirteenth day of June, one thousand eight hundred and twelve, to be held by the inhabitants of the said towns and villages in full property, according to their several rights therein, to be regulated or disposed of for the use of the inhabitants, according to the laws of the State of Missouri.

SEC. 2. *And be it further enacted*, That the United States do hereby relinquish all their right, title, and interest in and to the town and village lots, out lots, and common field lots, in the State of Missouri, reserved for the support of schools in the respective towns and vil.

lages aforesaid, by the second section of the above recited act of Congress, and that the same shall be sold or disposed of, or regulated for the said purposes in such manner as may be directed by the legislature of said State.

Approved January 27, 1831.

Wm. H. Cozens' test.

6. Plaintiff then called Wm. H. Cozens, who testified that he had been a surveyor for the last 30 years, and is familiar with the surveys in this vicinity; that the land in controversy was within the limits of the survey 407, given in evidence; also within the limits of the out-boundary line as shown by map X, given in evidence;
31 also within the limits of the line of the corporation established by the order of the Common Pleas Court of Nov. 9th, 1809, given in evidence.

On cross-examination witness testified: That the land in controversy was also within the boundaries of survey No. 3,078, in the name of Joseph Brazeau, and also in the boundaries of land described in a patent issued to Joseph Papin dated June 15th, 1826, shown to the witness by defendant's counsel. The land described in survey 407 as being assigned to the public schools, has been a tract with known locations and boundaries since 1836; has known Isaac Walker, the defendant, for many years; has known Walker to have had possession of the land in controversy for 23 or 24 years; Walker had a fence there in 1844.

Survey 407 is a compilation of old surveys; there are no new lines in it. All the specific boundaries spoken of by witness are set forth in the description of survey 407, given in evidence. Recollects first to have seen fence in 1843 or 1844, and it was then not new; the possession was either Walker's or Papin's. In 1844 the fence extended westwardly to the east line of the St. Louis commons; the north line of Walker did not extend to Russel's fence; Walker's northern
32 fence extended westwardly to the east line of the St. Louis commons. Seventh street was opened in 1850 or 1851; the fence was then taken down where street passed through; Walker's claim west of Seventh street was fenced in afterwards; cannot say when. When witness saw the Barton-street fence in 1844 it seemed then of some age.

It was admitted that defendant was in possession of the premises in controversy at the commencement of this action.

And plaintiff rested.

The defendant then offered and read in evidence—

1. Patent from the United States to Joseph Papin, dated June 15th, 1826.

Patent from U. S. to Jos. Papin June 15th 1826.—Certificate No. 1,148.

The United States of America, to all to whom these presents shall come, greeting:

Whereas, Joseph Papin, of St. Louis county, Missouri, has deposited in the General Land Office of the United States a certificate of the register of the land office, at St. Louis, Missouri, whereby it appears that full payment has been made by the said Joseph Papin, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," for the northwest fractional
33 quarter of section thirty-five, and the southwest detached part of the southwest fractional quarter of section twenty-six, in township forty-five, north of range seven east, in the district of lands offered for sale at St. Louis, Missouri, containing twenty-seven acres and twenty-nine hundredths of an acre, according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor General, which said tract has been purchased by the said Joseph Papin: Now, know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress, in such cases made and provided, have given and granted, and by these presents do give and grant unto the said Joseph Papin, and to his heirs, the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenance of whatsoever nature thereunto belonging, unto the said Joseph Papin, and to his heirs and assigns, forever.

In testimony whereof, I, John Quincy Adams, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office so be hereunto affixed.

34 Given under my hand, at the city of Washington, the fifteenth day of June, in the year of our Lord one thousand eight hundred and twenty-six, and of the independence of the United States the fiftieth.

By the President,

[L. S.] J. Q. A.

G. G.,

Commissioner of the General Land Office.

Recorded vol. 3, page 126.

GENERAL LAND OFFICE,

September 26th, 1848.

In accordance with the seventh section of the act of Congress, approved the 4th of July, 1836, entitled "An act to re-organize the

General Land Office," and with the act of Congress approved the 3rd of March, 1843, entitled "An act in relation to the exemplifications of the records of land patents and other evidences of title, and amendatory of the act entitled 'An act to re-organize the General Land Office.'"

I, Richard M. Young, commissioner of the General Land Office, do hereby certify that the annexed is a true and literal exemplification from vol. 3, page 126, of the patent record of this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year first above written.

[SEAL.] RICHARD M. YOUNG,
Commissioner of the General Land Office.

2. A deed of Joseph Papin to Larkin Deaver, dated Oct. 30th, 1832, and recorded Nov. 14th, 1832.

Deed of Jos. Papin eo Larkin Deaver.

To all to whom these presents shall come, Joseph Papin, and Phœbe, his wife, of the city and county of St. Louis, and State of Missouri, send greeting:

Know ye, that the said Joseph Papin and Phœbe, his wife, for and in consideration of the sum of five hundred dollars, have remised, released, and forever quit-claimed, and by these presents do for themselves and their heirs, remise, release and forever quit claim unto Larkin Deavers, of the city aforesaid, and to his heirs and assigns, forever, all the estate, right, title, interest, claim and demand whatsoever of them, the said Joseph Papin and Phœbe, his wife, of, in, or to all that certain tract, piece, or parcel of land lying and being situate in the county of St. Lous aforesaid, with the appurtenances, and containing thirteen acres and sixty-four hundreths and a half of an acres, and being the northern part of a tract of land, being the northwest fractional quarter of section thirty-five, and southwest detached part of the southwest fractional quarter of section twenty-six, in township forty-five, north of range seven east, in the district of lands offered for sale at St. Louis, Missouri, containing twenty-
36 seven acres and twenty-nineh undreths of an acre, as appear by patent issued in favor of said Joseph Papin, No. (1,148) eleven hundred and forty-eight; to have and to hold the said tract of land and premises above-mentioned, containing thirteen acres and sixty-four hundreths and a half of an acre, above-mentioned, unto him, the said Larkin Deavers, his heirs and assigns, to the only proper use and behoof of him, the said Larkin Deavers, his heirs and assigns, forever, so that neither the said Joseph Papin or his wife, nor theirs, or any of their heirs, nor any person or persons for them, or any of them, in their or either of their names or rights, shall or may, by any ways or means whatsoever, at any time hereafter, claim, challenge or demand, any estate, right, title, or interest of, in, or to the said lands and premises of thirteen acres and sixty-four and a half hundreths of

an acre, or any part thereof, being the northern part on a half of the patented tract, but from all and every action and action, estate, right, title, interest, claim and demand of, in, or to the said premises, they, and every of them, shall be forever barred by this presents; and the said Joseph Papin and Phabe, his wife, and their heirs, the said tract of land and premises, hereditaments, with the appurtenances, containing as aforesaid, thirteen acres and sixty-four and a half hundredths of an acres to the said Larkin Deaver, his heirs and
37 assigns, against them, the said Joseph Papin, and Phabe, his wife, their heirs and assigns to the said Larkin Deaver, will forever warrant and defend.

In witnes whereof, the said Joseph Papin, and Phabe, his wife, have hereunto set their hands and seals, at St. Louis, aforesaid, this thirtieth day of October, in the year of our Lord one thousand eight hundred and thirty-two.

[L. S.] JOSEPH PAPIN.
[L. S.] PHEBE PAPIN.

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered, that on this thirtieth day of October, in the year of our Lord one thouand eight hundred and thirty-two, before me, Mary Philip Leduc, a justice of the County Court, within and for the county aforesaid, came Joseph Papin and Phebe, his wife, both personally known to me to be the persons whose names are subscribed to the above instrument of writing, as having executed the same, and severally acknowledged the said instrument to be their act and deed for the purposes therein mentioned; she, the said Phebe, being by me first made acquainted with the contents thereof, and examined separate and apart from her husband, whether she executed the said deed, and relinquishes her dower to the lands and
38 tenements therein mentioned, voluntarily, freely, and without compulsion or undue influence of her said husband, acknowledged and declared that she executed the said deed and relinquised her dower in the said lands and premises therein mentioned, voluntarily, freely, and without compulsion or undue influence of her said husband.

Taken and certified the day and year aforesaid.

M. P. LEDUC,
Justice County Court, St. Louis County.

Recorded this 14th November, 1832.
ARCHIBALD GAMBLE, *Recorder.*

STATE OF MISSOURI, *County of St. Louis, ss:*

I, Julius de Mun, clerk of the County Court, and ex-officio recorder for the county aforesaid, certify that the foregoing is a true copy of a deed from Joseph Papin & wife to Larkin Deaver, as the same remains of record in my office, in book S, page 245.

Given under my hand and the seal of said court, at office, this 2nd day of June, A. D. 1842.

[SEAL.] JULIUS DE MUN, *Recorder.*

3. Deed of Larkin Deaver, to Isaac Walker, dated Sept. 25th, 1833. Recorded Oct. 20th, 1833.

Deed of Larkin Deaver, to Isaac Walker.

To all to whom these presents shall come, Larkin Deaver, and Zoe Fanny, his wife, of the city and county of St. Louis, and
39 State of Missouri, send greeting:

Know ye, that the said Larkin Deaver, and Zoe Fanny, his wife, for and in consideration of the sum of five hundred and twenty-five dollars, to them in hand paid by Isaac Walker, of the city and State of New York, the receipt whereof is hereby acknowledged, have remised, released and forever quit-claimed, and by these presaets, do for themselves and their heirs, remise, release, and forever quit claim unto the said Isaac Walker, and to his heirsand assigns, forever, all the estate, right, title, interest, claim, and demand whatsoever of them, the said Larkin Deaver and Zoe Fanny, his wife, of, in, or to all that certain tract, piece, or parcel of land lying and being situate in the county of St. Louis, aforesaid, with the appurtenances, and containing thirteen acres and sixty-four hundredths of an acre, and being the northern part of a tract of land, being the northwest fractional quarter of section thirty-five, and southwest detached part of the [of the] southwest fractional quarter of section twenty-six, in township forty-five north, of range seven east, in the district of lands offered for sale at St. Louis, Missouri, and being the same which the said Larkin Deaver purchased from Joseph Papin and Phœbe, his wife, by deed bearing date the thirtieth day of October, in the year of our Lord one thousand eight hundred and thirty-two, and to be
40 found of record in the recorder's office of the county of St. Louis aforesaid, book S, page (245) two hundred and forty-five, and following; to have and to hold the said tract of land and premises above-mentioned, containing thirteen acres and sixty-four hundredths of an acre, above-mentioned, unto him, the said Isaac Walker, his heirs and assigns, to the only proper use and behoof of him, the said Isaac Walker, his heirs and assigns, forever, so that neither the said Larkin Deaver or his wife, nor their's or any of their heirs, nor any person or persons for them, or any of them, in their or either of their names, or right, shall or may, by any ways or means whatsoever, at any time hereafter, claim, challenge or demand any estate, right, title, or interest of, in, or to the said lands and premises of thirteen acres and sixty-four and a half hundredths of an acre, or any part thereof, being the northern part of half of a tract of twenty-seven acres and twenty-nine hundredths of an acre. But from all and every action and actions, estate, right, title, interest, claim and demand of, in, or to the said premises, they and every of them shall be forever barred by these present. And the said Larkin Deaver and Zoe Fanny, his wife, and their heirs, the said tract of land and premises, hereditaments, with the appurtennances, containing as aforesaid, thirteen acres and sixty-four and a half hundredths of an acre, to the said
41 Isaac Walker, his heirs and assigns, against them, the said

Larkin Deaver and Zoe, his wife, their heirs and assigns, to the said Isaac Walker, will forever warrant and defend.

In witness whereof, the said Larkin Deaver and Zoe Fanny, his wife, have hereunto set their hand and seals, at St. Louis aforesaid, this twenty-fifth day of September, in the year of our Lord eighteen hundred and thirty-three.

[SEAL.] LARKIN DEAVER.
[SEAL.] FANNY DEAVER.

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered, that on this fifth day of October, in the year of our Lord one thousand eight hundred and thirty-three, before me, Mary Philip Leduc, a justice of the County Court, within and for the county aforesaid, came Larkin Deaver and Fanny, his wife, both personally known to me to be the persons whose names are subscribed to the above instrument in writing as having executed the same, and severally acknowledged the said instrument to be their act and deed for the purposes therein mentioned, she, the said Fanny, being by me first made acquainted with the contents thereof, and examined separate and apart from her husband, whether she executed the said deed, and relinquishes her dower to the land and tene-
42 ments therein mentioned, voluntarily, freely, and without compulsion or undue influence of her said husband, acknowledged and declared that she executed the said deed and relinquishes her dower in the said lands and tenements therein mentioned voluntarily, freely, and without compulsion or undue influence of her said husband.

Taken and certified the day and year aforesaid.

M. P. LEDUC,
Justice County Court St. Louis County.

STATE OF MISSOURI, *County of St. Louis, ss:*

I, Archibald Gamble, clerk of the Circuit Court and ex-officio recorder for the county of Saint Louis, do hereby certify that the foregoing deed from Larkin Deaver and Fanny Deaver, his wife, to Isaac Walker, is truly recorded in my office, in book T, page 110 (one hundred and ten and following.)

Given under my hand and the seal of the Circuit Court, at office, in the city of Saint Louis, this tenth day of October, in the year of our Lord one thousand eight hundred and thirty-three.

[SEAL.] ARCHIBALD GAMBLE, *Recorder.*

4. Paper containing proceedings of boards of commissioners
43 in 1832 and 1833 on claim of Joseph Brazeau, and papers presented to said board.

1. *Claim.—Proceed'gs of b'ds of com'rs in* 1832 *and* '33, *&c.*

Joseph Brazeau remet au greffe des Etats Unis les titres et papiers suivants.

No. 1. Titre de concession expediee par le L'nt Gov'eur Don F'co Cruzat du 20 Nov're, 1786.

2de. Copie certifiee de la vente juridique m'a ete faite par Mons'r Venito Vasquez en datte de 26 de Mai, 1800, de deux arpens de terre deface, sur la profondeur comprise entre le chemin du Carondelet et le fleuve, la dite partie de terre situe au S. de la concession No 1.

3. Requette et decrit du L't Gov'r Charles Dehault Delassus en datte du 19 Nov're, 1799 que accorde une augmentation a boeust de de la concession No. 1 qui complette au dit proprietair le profondeur de 30 arpens a prendre de fleuve.

4. Requete et decret du L'nt Gov'r Charles Dehault Delassus en datte du 17 Juin, 1800 qui accorde au suplian la meme continuation et augmentation mentionee dans l'article ci-dessus pour la partie de terre acquise de Mons. Venito Vesques mentionee par la copie de l'acte de vente cotte No. 2.

5. Plant et certific'te d'arpentage des parties des terres mentionees ci-dessus expedie le 21 Aout, 1803.

6. Copie certifiee du titre accorde a Mons. Venito Vasquez par le L'nt Gov'r Don F'co Cruzat, en virtue du quel la vente No. 2 a ete faite.

7. Attestation de Mons. P're Chouteau et Jac'us Clamorgan, reconue un juge qui constate l'etablissement des parties de terre mentionnees en l'autre part.

44 * * * *

No. 1 *in notice.*

S'or Tente de gov'r:

Joseph Brazeau, vecuio de este pueblo de St. Louis, en la myor forma que aya luyar en derecho; dize que desea establecer una avitacion para criar anima les y haser lo valer.

2. A. V. M. Sapp'ca quiora conceder le diez arpanes de tierra de Norte a sur de las de el Dominio de S. M. que confinan por el este al Rio Mississipy, y por el veste al Camino Real de Pequena Pradena; gracia que espera de la equitativa Justicia de Vm. St. Louis de Ilinois 18 de Nov'r de 1786, Braseau D'n Fran'co Ceuzat Ten'l Coronel Graduado de Infanteria, Cap'n de Granaderos del Regimento fixo de la Luisana, Comandante y Ten'te de Gobernador de esta Partida Occidental y distritos de las Illin's.

Visto lo expuesto en el memorial presentado por Josef Brazeau vecino y residente de esto pueblo con f'ha del 18 Noviembre de este corr'te ano le he consedis y corozeda a titulo de propriedad para el y sus herederos y otros g'l representer sa derecho un Terreno de Diez arpanes de tierra del Norte al Sur que confina por a Lado a la Orilla del Rio Misisipy, y por el otro al Camino real que la Parderia Catalan con condition de establicerla y oserla Baler dentro de un
45 ano a contar desde el dia de esta fha; q de lo contrario sera incorporada dicha tierra al Dominio de Rey; deviendo estar seyete a los cargos publicos y otros que sa M. quiera imponerle. Dado en St. Louis, de Ilin's a los Viente dias del Mes de Noviembre del ano del mil sete cientos ochenta y seis.

FRAN'CO CRUZAT.

No. 2 in notice.

En la villa de San Luis de Illinois a los Viente y seiz dias del Mes de Mayo del ano de mil y ochocientos, a defecto de escribano publico; Aotemy Don Carlos Dehault Delassus Tent'e Cor'l de los reas Exert'o y Tent'e de Gobernador de esta Alta Luisiana, y en presencia, de los Testigos de assisten'cia Don Pedro Leffilard y Jp'h Nortiz estuvo presente en sa personna el S'r Don Benito Vasquez, Captain de Milicias y del commercio de esta reprido Villa, ce qual por estas pres'tes. Declara y conpesa haver oydia vendido cedido, transportado y abandonado tanto hara haora ceomo para siempro, y prousete hazar y preservar de todas dendas, ducinos, hypotecas, lirbiciones, sobstituciones y generalamente, to do logue solo pudiesen a D'n Jp'h Brazaux Vicim y qualment de esta referida Villa, a qui presente stipalando, acceptando y adquirendo para el y sus herederos n otros que representen su der'o Dos arpanaes de tierra de frente situada come a distencia pormas omenos de media legua de esta suso tha Villa del lado sud, sabre la orilla Del Rio Mississippi. Dando esta suprimer frentes al d'ho Rio, y sa profundor haste el camino
46 que conduce al pueblo de Carondelet, y luida del lado del norte a la Tierra del expresado adquiriente, y del sur a la del Sr'r vendidorla qual obtuvo este hultimo por concession en al ano de mil setecientos ochentas y seis y cultibado hasta esta epoca; y el adquiriente declara haver visto y visitado dando se por contento y satisfecho adquiriendola segun y conforme alas Leyes, y por el precio y suma de cuenfesos pagados contantes en dinero corriente de esta pajs, de cuya suma el dho. G'or Don Benito Vasques, se da por contento, y satisfecho sadana estenarse en reservarse Dande por estas presentes al G'or D'n Jp'h Brazaux plena enterra quitanza paraque en lo sucessivo pueda disponer, enaguear, o vendar a sulivre albe drio como un Bien a el perteneciente y bien adquiricudo; asy han concindo y accordado, promettando, &c., obligando, &c., echo en esta Sala del Gobierno en presencia de los enunciados Testigos d'asistencia que han firmado a las presentes commigo dho Tren'te de Govern'or y las partes el mismo dia, mes y dho, que vt sapra. Benito Vasques, Jp'h Brazaux, J'ph Hortiz, Pedro Laffilard, Carlos Dehault Delassus, D'n Carlos Dehault Delassus, Ten'te Cor'l de los R'd extos, y Tente de Gobernador de esta Alta Luisiana. Certifico que la presente Copia es conforme al orig'l que queda depositado en archibo de este Gobierno di mi mando S'n Luis de Illinois fha ut Supra Carlos Dehault Delassus. (See book B, p. 416.)

No. 3 in notice.

A. D'n Ch's Dehault Delassus, L'ut Col. agrege du Regiment Fix de la Louisiane, et Lieu'nt G'eur de la partie haut de la meme province.

Jo's Brazeaux, creole des Illinois, et l'un des plus ensiens
47 habitants de cette ville, a l'honneur de vous representer qu'il obtint de D'n Francois Cruzat, L'nt Gov'r de cette haute

Louisiane (dans le cours de l'annee 1786) le concession d'une terre de dix arp's de fasse sur la propindeur qui se trouve entre le fleuve et le chemin R'l la dite terre situee dans la petite prairie qui avoisine cette ville, comme cela est constate par la titre de concession original ci-joint, considerant que la dite quantite est insufisante pour les moyens de culture, entiairement donee de bois, le suppliant espere que prenant en consideration son ensienete dans le pays in pays il bons plaira lui accorder une ogmentation de douse arp's de Fatse a prendre du Chemin R'l, sur une profondeur qui lui complaite traute arp's a prendre du point primitif de sa premiere concession, qui est le bord du fleuve Mississipy su comprenant dans l'arpentage qui aura lieu sa concession primitive au termes de son titre de concession. comme la dite terre n'a aucune proprietaries conus, et que l'esablissement qu'il se propose sera plutot avantageux que nuisible aux environs de cette ville, qui sont remplis de pays fourres qui servent de refuge aux loups pendant le nuit; le supplient espere ol tenir de votre justice la grace qu'il en solicite.

St. Louis, 19, 9'bre, 1799.

J'H BRAZEAU.

St. Louis de Illinois, 19 *de* 9'*bre de* 1799.

Alentiendo a que el que Sopp'ca es uno de los mos antequos habitantes de este Pays coya conocida conducta y precedas personales son recomendables, y constandonee con evidencia quanto expone en suplica, el agumensor de esta Luisiana alta D'n Antonio Soulard le apeara la cantidad de tierra que le pu acordade por el Defunto D'n Franco Cruzat Ten'te de Gob'or q'l pu de estos etablecim's segun conste de la concesion orig'l aqui inserta, y apera iqualmente la porcion de tierra q'l piede de aumento, lo q'l evacuado sicara plane y entreyas este a la parte, y certification para que le serve a obtener la concession y tetulo en forma del Sen'or Intende'a G'ral de estas provencias a quien de R'l orden corresponde privatiramente el repartir y conceder toda clase de tierras recalengas.

48

CARLOS DEHAULT DELASSUS.

[See on page 10, document 4, in notice omitted here.]

No. 5 in notice.

Nota.—Los termuros puestos a todas los angulos y indicados en el plano figuratuo, Todas los arboles de las luieas van sena lados con una muesca Sup'ry dos cana la duras inferiores y los de dra y iz querda muescados solaiente Asent. do Liba B, de los Exp'es para P'to Folio 18, No. 21.

49

D'n Antonio Soulard, agrimensor particular de la Alta Louisiana, certifico que pu medida, luidada y ano jouada a favor y en presencia de D'n Jos'h Brazeau, una tierra de tres cientos quarante y siete arp's planos medidas con la percha de le Ciudad de Panis, de diez y ocho pies de Rey de large luicales de la misma ciudad segun medida agraria en esta provincia cuya tierra situada a viente y cinco o

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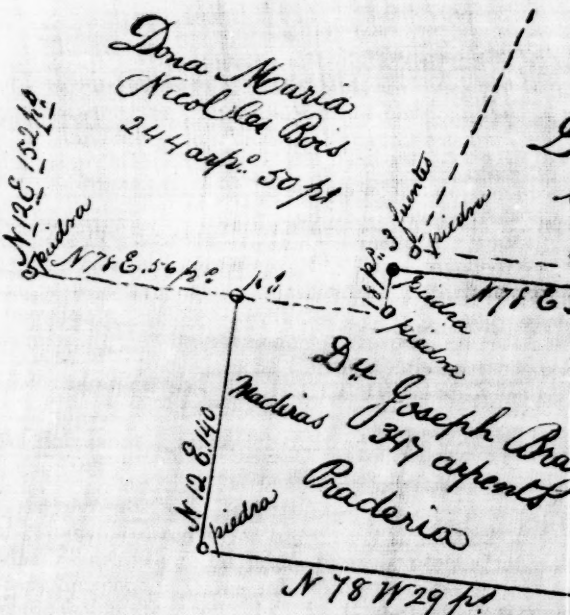

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Schools page 48.
ver bal

trenta arp's al S. de esta Villa Luidando por el O. con tierras del Dominis R'l al E. con el rio Mississippy al N. por las de D'n Antonio Soulard, y D'a Maria Nicol, y por el S. con tierras de diversios habitantes, cayos a peos y medias la hicieronsui tocor a lo que puede darde si la variation de la agu ja que es Tg's y 30 M's E. como consta del plano figurativo que ante sede en el que van ano todas las dimensiones y Rumbos de las limites y demas confines, &c; cuyo apes le practico en virtud de los memoriales y decretos del S'or T'e de Gob'or y sub delgado de Real Hacienda Don Carlos Dehault Delassus, en fha de diez y nueve de Noviembre, del ano mil sete cientos noventa y nueva y diez y siete de tmuo de mil ocho cientos como se evidenca las piezas juridicas que acompanan y para que precede vacado in conformidad de las diligencias practicadas por el Ten'l Agrimesisor D n Santiago Mackay en fha de viente y ocho de mayo de mil ocho cientos tres de lo que day fe. En S'n Luis de Illinois, a los viente y uno de Agoste del ano mil ocho cientos tres.

ANTOINE SOULARD, *Ag'r p'r.*

See Book B, ps. 415, 416 & 417.

50 JULY, 19*th*, 1866.

The board met agreeably to adjournment. Present, the Honorable John B. C. Lucas, Clement B. Penrose, and James L. Donaldson, esquires.

Joseph Brazeau, claiming 19 arpens front from north to south, bounded by the Mississippi on the east, westerly by the Main road leading to the prairies a catalan, district of St. Louis, produces a concession (duly registered) from Francis Cruzat, dated 20th November, 1786.

Jacques Clamorgan, being duly sworn, says that he, the witness, arrived in the county in the year 1783; that 2 or 3 years afterwards the claimant moved on said land on which he did build a house, either that year or the year following, and that the same has been actually inhabited and cultivated to this day, either by claimant or for his use.

The board confirm to the said claimant the above-described tract of land, supposed to contain about one hundred and twenty arpens. Survey to be ordered.

The same, claiming 12 arpens front joining his former concession and granted him a compensation, the same being of the depth of thirty arpens, beginning at the aforesaid tract, granted him by Cruzat, produce a concession from Charles Dehault Delassus, dated November 17th, 1799, and a survey of 347 arpens, forming the whole of the above tracts claimed by him, and dated the 28th of May. Cer-

51 tified the 21st August, 1803.

This claim being unsupported by actual inhabitation and cultivation, the board reject the same. They remark that they are satisfied that the aforesaid concession was granted at the times it bears date, but that the same interferes with a tract of land claimed by the inhabitants of the town of St. Louis as commons.

On motion, adjourned to Tuesday, the 22nd inst., 9 o'clock a. m.

See Book of Minutes, No. 1, pp. 412 & 413.

MONDAY, *August 19th*, 1811.

Board met. Present, Clement B. Penrose and Frederick Bates, commissioners.

Joseph Brazeau claiming 347 arpens of land. (See book No. 1, page 413.) It is the opinion of the board that this claim ought not to be confirmed.

Board adjourned till to-morrow, eight o'clock, a. m.

CLEMENT B. PENROSE.
FREDERICK BATES.

See Book of Minutes No. 5, pp. 319, 320 & 321.)

No. 6 in notice.

Sen'r Ten'te de Gov'r, Don Benito Vasquez, vezino del pueblo de S'n Luis en la mexor forma que aya Luyar en derecho dize que desea etablecer una abitacion para coiar animales y hacer la vater. A. V.M. suplica quiera consider le meebe arpanes de tierra de las del Dominio de Sa Mag'd que confina perpel norte a la de Joseph
52 Brazeau, por el sur a la de Mr. Motar por al este al rio Mississippi; y al vaste al camino real de la pequena praderia, gracia que espere de la equitativa justicia de V. M's.

St. Louis de Illinois, 18 de 9bre 1786.

BENITO VASQUEZ.

D'n Fran'co Cruzat, Tent'e Coronel, Graduado de Infanteria, Cap'n de Granaderos del Regimento Fixo de la Luisiana, Comandante y Temiate de Gobernador de esta partida occidental y districtos de los Ill's. Visto to expuesto en el memorial presentada por D'n Benito Vasquez, vecino de este pueblo con Fecha de diez y ocho de Noviembre de este corneate ano le e consedido y consedo a titulo de propriedad por el y sus herederos y otro g'e representer su derecho los nueve arpanes de tierra que confinar por un lad a las tierras de Josef Brazeau por el otro a las de Josef Motar por el este a la Orilla de Rio Mississippi y por el veste al camino real que ba a la Praderia a Catalan au condicion de etablecer dentro de un ano a contar desde esta fha y de lo contrario que dara incorporados dichos nueve arpanes al Dominio Real deviendo estar sujeto a todos los cargos publicos y otros que Su M. quiera imponerte.

Dado en S'n Louis de Illinois a los viente dias del mes de Noviembre del ano de mil sete-cientos ochenta y seis.

FRANC'O CRUZAT.

(See Book B, ps. 417 & 418.)

53 JULY 19*th*, 1806.

The board met agreeably to adjournment. Present, the Honorable John B. C. Lucas, Clement B. Penrose, and James L. Donaldson, es'qrs.

Joseph Brazeau, assignee of Benito Vasquez, claiming 2 arpens of

land situate in the district of St. Louis, running north and south, bounded northerly by a tract; the property of said claimant, being part of tracted granted said Benito Vasquez by concession from Francis Cruzat, dated the 22nd of November, 1786, produces the said concession, together with an assignment of said land date 26th of May, 1800.

Jacques Clamorgan, being duly sworn, says that the said Benito Vasquez settled the said tract of land about the year 1788; built a house on the same, and that the same has been actually cultivated either by the said Benito, or his representatives, to this day, and that three crops had been raised on the same prior to the year 1800.

The board reject this claim for want of actual inhabitation on the 1st day of October, 1800, and remark that the said Benito, having raised three crops on the same, had, by the Spanish laws and usages, acquired the right of domain.

On motion, adjourned to Tuesday, the 22nd instant, 9 o'clock.

(See Book of Minutes, No. 1, pp. 412 & 413.)

MONDAY, *August* 19*th*, 1811.

54 Board met. Present Clement B. Penrose and Frederick Bates, commissioners.

Josep Brazeau, assignee of Benito Vasquez, claiming 2 arpens front running back to the road leading from St. Louis to Carondelet.

(See Book No. 1, page 412.)

The board order that this tract be surveyed; survey at expense of claimant.

Board adjourned till to-morrow eight o'clock, a. m.

CLEMENT B. PENROSE.
FREDERICK BATES.

(See Book of Minutes No. 5, pages 319 & 121.)

"*Omitted on page* 5, *No.* 4 *in notice.*"

D'n Carlos Dehault Delassus, Lieut'r Col'l agrege au Reg't Fixe de la Louisiane, et Lieut'r Gouverneur de la partie haute de la meme Province.

Joseph Brazeaux, a l'honneur de vous representer que differentes circonstances l'ayant empeche jusqu'a ce jour de reclamer de Mr. L'arpenteur de cette haute Louisiane L'arpentage de la terre qu'il vous plat de lui accorder par votre decret en date du 19e de 9bre de l'annee derniere, et considerant que depuis cette epoque il a acquis de Don Venito Vasquez, en datte du 26 du mois passe de cette presente annee, comme il conste par la copie certifiee de la vente jurisdique passee par devant vous ci-jointe, d'une augmentation de deux arpens de terre de face, sur la profondeur existente entre la Fleuve et la chemin R'l laquell augmentation come' au N. la terre qui un (me) fut concedee par Don Fran'co Cruzat. J'ai l'honneur de vous supplier d'ordoner a Mr. L'arpenteur de cette jurisdiction de
55 un (me) comprendre la dite augmentation en accomplissement

de votre decret en date du 19 Novembre de l'annee derniere, grace que le suppliant ose meriter de votre justice.

J'H. BRAZEAUX.

St. Louis, 17 Juin, 1800.

ST. LUIS DE ILLINOIS, 17 DE JUIN DE 1800.

El agrimensor de esta Louisiana Alta Don Antonio Soulard incorporada en los apeos g'l dibe practicar por Don Joseph Brazeaux las dos arp's de tierra g'l adquirio de D'n Benito Vasquez p'r venta juridica pasada ente este Gobernio; in compline'to del Decreto que p'a ello expedio en 19 de 9bre del ano-ultimo para g'l provesto de los, documentos necessarios frueda rexeurir a lu In'ta P'e de esta Pro'cia y solicite ~~la ratification~~ y titulo de propriedado en forma de aquel tribunal del conjunto, o totalidad de la tierra.

CARLOS DEHAULT DELASSUS.

See book B, page 417.

OFFICE OF THE RECORDER OF LAND TITLES,
St. Louis, 11 *November*, 1854.

I certify that the foregoing, on pages 1 to 10, is correctly transcribed from the books on file in this office.

ADOLPHE RENARD,
U. S. Recorder of Land Titles in Mo.

Translation of those parts of the foregoing which are in the French and Spanish languages.—Claim.

Joseph Brazeau files in the office of the United States, the
56 following titles and papers:

No. 1. Title of concession, issued by the lieutenant governor, Don Francisco Cruzat, of 20th November, 1786.

No. 2. Certified copy of the judicial sale made to me by Mr. Benito Vasquez, dated 26th May, 1800, of two arpens of land in front, by the depth between the road to Carondelet and the river. The said parcel of land being situated south of the concession No. 1.

No. 3d. Petition and decree thereon of the lt. gov'r, Charles Dehault Delassus, dated 19th November, 1799, who granted an augmentation west of the concession No. 1, which completes to the said owner, the depth of 30 arpents to be taken from the river.

No. 4th. Petition and decree thereon of the lieutenant governor, Don Charles Dehault Delassus, dated the 17th June, 1800, granting to the petitioner the same continuation and augmentation mentioned in the next above article for the parcel of land acquired of Mr. Benito Vasquez, as stated in the copy of deed of sale No. 2.

No. 5th. Plat and certificate of the survey of the above parcels of land, dated the 21st August, 1803.

No. 6th. Certified copy of the grant to Mr. Benito Vasquez, by the lieutenant governor, Dn. Fran'co Cruzat, in virtue of which the sale No. 2 was made.

No. 7th. Attestation of Messrs. Peter Chouteau and Jacquez Clamorgan, sworn before a magistrate, by which the improve-
57 ment of all the parcels of land above designated is proven.

(NOTE.—This attestation is not of record.—A. R., *R.*")

No. 1.—*In notice.*

To the lieutenant governor:

Joseph Brazeau, a citizen of this town of St. Louis, in the best form that in right may be, says that he wishes to establish an habitation for the purpose of improving it, and raising cattle thereon. Therefore he supplicates your lordship to be pleased to concede to him ten arpens of [of] land (from north to south) belonging to the royal domain, which shall be bounded on the east by the river Mississippi, and west by the King's road leading to the little prairie; a favor which he presumes to hope from the equity and justice of your lordship.

Saint Louis, of Illinois, 18th of November, 1786.

BRASEAU.

I, Francis Cruzat, lieutenant colonel of infantry by brevet, captain of grenadiers in the stationary regiment of Louisiana, and lieutenant governor of the western part and the districts of Illinois, after having seen the petition handed by Joseph Brazeau, a residing citizen of this town, dated the 18th of November, of this current year, have conceded, and I do concede, to him, his heirs, or others who might represent his right, a tract of ten arpens of land, running from north to south, and bounded on one side by the bank (orilla) of the river Mississippi, and on the other side by the King's road leading to the prairie a Catalan, under the condition to establish and im-
58 prove the land within one year from the date hereof; and that, in case of the failure of this condition, it shall be reunited to the royal domain, the said land being to remain liable to the public and other charges that it shall please his Majesty to decree thereon.

Given in St. Louis, of Illinois, on the twentieth day of the month of November, in the year one thousand seven hundred and eighty-six.

FRANCISCO CRUZAT.

No. 2.—*In notice.*

In the town of St. Louis, and on the 26th day of the month of May, in the year 1800, for want of a public notary, before me, Charles Dehault Delassus, lieutenant colonel of the royal armies, and lieutenant governor of this Upper Louisiana, and in the presence of the assisting witnesses, Peter Loffilard and Joseph Hortiz, was personally present Mr. Benito Vasquez, captain of militias and merchant of this town, who, by these presents, declares and acknowledges to have this day sold, ceded, conveyed, and left, now and forever, and

promises to warrant from all debts, dowers, mortgages, evictions, substitutions, and generally all impediments whatever, unto Mr. Joseph Brazeau, also a citizen of this town, here present, and stipulating, accepting, and acquiring for himself, his heirs or assigns, two arpents of land in front, situated half a league, more or less, to the south of this town, on the bank of the river Mississippi, (the front beginning at said river, and the depth running to the road leading to the
59 post of Carondelet,) bounded on the north side by the land of said acquirer, and south by that of the vendor, who has obtained it by concession in the year 1786, and has cultivated it to this day; and the acquirer declares to have seen and examined the said land, and is satisfied therewith; purchasing the same according to law, and for the price and sum of one hundred dollars, paid in lawful money of the county, with which the said Benito Vasquez is satisfied without reserve, giving by these presents, to the said Joseph Brazeau full and entire discharge, in order that in future, he (Brazeau) may dispose of, alienate, or sell the said land, as belonging to him, and well acquired. Thus they have agreed upon, and covenanted, promising, &c., binding themselves, &c.

Done and executed in the hall of this government, in the presence of the aforesaid assisting witnesses, who have signed the presents with us, the said lieutenant governor, and the parties, same day, month, and year as before.

BENITO VASQUEZ.
JOSEPH BRAZEAU.
JOSEPH HORTIZ.
PETER LAFFILARD.
CHARLES DEHAULT DELASSUS.

I, Charles Dehault Delassus, lieutenant colonel of the royal armies, and lieutenant governor of this Upper Louisiana, do certify that the present copy is conformable to the original filed in the archives of this government under my charge.

St. Louis of Illinois. Dated as before.

CHARLES DEHAULT DELASSUS.

No. 3.—*In notice.*

To Don Charles Dehault Delassus, lieutenant colonel, attached
60 to the stationary regiment of Louisiana, and lieutenant governor of the same province:

Joseph Brazeau, a native of Illinois, and one of the most ancient settlers of this town, has the honor of stating to you, that in the course of the year 1786, he obtained from Don Francis Cruzat, lieutenant governor of this Upper Louisiana, the concession of a tract of land, ten arpents in front, by the depth included, between the river and the royal road; the said land being situated in the little prairie adjoining this town, as is proven by the original title of concession hereto annexed. Considering that the said quantity is insufficient for his means of culture, and entirely destitute of wood, the

petitioner hopes that, taking into consideration the long time he has been settled in this country, you will be pleased to grant to him an addition of twelve arpents in front, to be taken from the King's road, by a depth which shall complete to him thirty arpents, to run from the beginning point of his first concession, which is on the bank (bord) of the river Mississippi, including in the survey that shall be made, his former concession, according to the words of the title thereof, as the said land is not owned by any known proprietor, and the establishment which the petitioner intends to make, shall be rather advantageous than detrimental to the vicinity of this town, in which there are many thickets where wolves conceal themselves during the night, the petitioner hopes to obtain from your justice the favor that he solicits.

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St. Louis, 19th of November, 1799.

J. BRASEAU.

ST. LOUIS OF ILLINOIS, 19*th of November*, 1799.

Considering that the petitioner is one of the oldest settlers of this country, whose known conduct and personal worth are recommendable, and being satisfied to the truth of what he states in his demand, the surveyor of this Upper Louisiana, Don Antonio Soulard, will survey for him the quantity of land granted to him by the late F's Cruzat, former lieutenant governor of these settlements, as is evident from the original concession hereto annexed. The said surveyor shall also survey the tract of land asked in augmentation by the petitioner, which being executed, he shall draw a plat and deliver it to the party, with his certificate thereto, in order that this document may be used to obtain the concession and title in form from the intendant general of these provinces, to whom alone is delegated by royal order the right to grant and divide all kinds of royal lands.

CARLOS DEHAULT DELASSUS.

No. 4.—*In notice.*

To CHARLES DEHAULT DELASSUS, lieutenant colonel of the stationary regiment of Louisiana, and lieutenant governor of the upper part of same province :

Joseph Brazeau has the honor to state that divers circumstances having prevented him to this day to request of the surveyor of this Upper Louisiana, the survey of the tract of land that you were pleased to grant him by the decree of the 19th November of last year, and considering that since that time he has purchased of Mr. Benito Vasquez, on the 26th of last month, in this current year, as appears from the certified copy of the judicial deed of sale executed before you, here annexed, an addition of two arpents front, by the depth between the river and the King's road, which is bounded north by the land granted to me by Mr. Fran'co Cruzat, I have the honor to ask that you will be pleased to direct the surveyor of this district to embrace the said addition in the sur-

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vey decreed by you on the 19th of November of last year; favor which the petitioner hopes to deserve from your justice.

St. Louis, 17th June, 1800.

JOSEPH BRAZEAU.

ST. LOUIS, OF ILLINOIS, 17*th June*, 1800.

The surveyor of this Upper Louisiana, Antonio Soulard, shall include in the surveys which he is directed to make for Mr. Joseph Brazeau, the two arpents of land purchased by him of Mr. Benito Vasquez, as per the judicial sale executed in this district, in fulfilment of the decree for the said surveys, dated the 19th November of last year, in order that, being provided with the necessary documents, the said Brazeau may apply to the general intendancy of this province, and solicit from this tribunal the ratification of his
63 final title to the property of said addition, or the totality of the land.

CHARLES DEHAULT DELASSUS.

No. 6.—*In notice.*

To his lordship the lieutenant governor :

Benito Vasquez, a resident of the town of St. Louis, in the best form may be, says that wishing to establish an habitation to raise cattle thereon and improve it, he supplicates your lordship to be pleased to concede to him nine arpents of land of the lands of the royal domain, which are limited on the north by the tract of Joseph Brazeau, on the south by Mr. Motard's land, on the east by the river Mississippi, and on the west by the royal road leading to the little prairie, a favor which the petitioner hopes to obtain from your equity and justice.

St. Louis of Illinois, 18th of November, 1786.

BENITO VASQUEZ.

I, Don Francisco Cruzat, lieutenant colonel of infantry by brevet, captain of grenadiers of the stationery regiment of Louisana, commandant and lieutenant governor of the western part and the districts of Illinois, having seen the statement in the petition of Benito Vasquez, a citizen of this town, dated the tenth of November of this current year, I have conceded, and I do concede to him, his heirs, or others who may represent his right, the nine arpents of land bounded on one side by the lands of Joseph Brazeau, on the other side by the lands of Joseph Motard, east by the bank (orilla) of the
64 river Mississippi, and west by the king's road leading to the prairie a "Catalan," (now Carondelet,) under the condition to improve it within the term of one year from the date hereof; and that, on the contrary, that the said nine arpents shall remain of the domain, the same being subject to the public and other charges which it shall please his majesty to decree.

Done in St. Louis of Illinois on the 20th day of November of the year 1786.

[S] FRANC'O CRUZAT.

No. 5.—In notice.

NOTE.—Bounds were set to all the corners. They are shown on the plat. All the line trees were marked with one blaze above two notches, and the trees on both sides of the line weres blazed only. Registered in book B of surveys for this post, folio 16, no. 21.

Certificate to survey.

I, Antoine Soulard, surveyor particular of Upper Louisiana, do certify that a tract of three hundred and forty-seven arpens of superficial land was measured and bounded in favor and in presence of Joseph Brazeau. Said measurement was executed with the perch of Paris, eighteen French feet in length, agreeably to the mode of surveying lands used in this province. This tract is situated at 25 or 30 arpents to the south of this town, bounded west by the lands of the royal domain, east by the river Mississippi, north
65 by lands belonging to Antoine Soulard Mary Nicolle, and south by lands of sundry inhabitants; and the survey of said land was made regardless of the variation of the needle, which is 7 degrees and thirty minutes east, as shown by the foregoing plat, on which are laid down the direction of the lines and other limits, &c. The said survey was executed in virtue of the petition (of Brazeau) and the decrees (thereon) of the lieut'nt governor and sub-delegate of the royal treasury, Don Carlos Dehault Delassus, dated 19th November, 1799, and 17th June, 1800, as proven by refering to the juridical documents hereto annexed.

I testimony whereof, I do give the present certificate, with the foregoing plat, constructed in conformity to the survey made by the deputy surveyor, James Mackay, on the 28th of May, 1803, which I do certify.

St. Louis of Illinois, 21st of August, 1803.

ANTOINE SOULARD, *Special Surveyor.*

ST. LOUIS, 11*th November*, 1854.

I have correctly translated the foregoing.

ADOLPH RENARD.

THURSDAY, *March* 14*th*, 1833.

The board met pursuant to adjournment. Present, L. F. Linn, N. G. Harrison, F. R. Conway, commissioners.

Joseph Brazeau, by his legal representatives, claiming 12 arpents front on the Mississippi, running back 30 arpents. (See book B, 416., Dec. 84, page 315.)

Mins. No. 1, 413, No. 5, p. 320. Produces a paper pur-
66 porting to be an original concession from Carlos Dehault Delassus, dated 19th November, 1799; also a plat and certificate of survey, dated 28th August, 1803.

Pascal L. Cerre, duly sworn, says that the signature to the concession is in the proper handwriting of Charles D. Delassus, and the

signature to certificate of survey is in the proper handwriting of A. Soulard. He further states that Joseph Brazeau, to his knowledge, inhabited and cultivated the land embraced in the concession of 1799, which land so cultivated was the same as contained in the concession of 1786, and which inhabitation and cultivation has continued from 1799 to the present time by him or his legal representatives; he believes that the land so cultivated was the whole embraced in the concession of 1786.

Adjourned until to-morrow, at 10 o'clock a. m.

L. F. LINN.
A. G. HARRISON.
F. R. CONWAY.

(See book of Minutes, No. 6, pp 123, 124, and 125.)

MONDAY, *November 11th.*

The board met pursuant to adjournment. Present, L. F. Linn, A. G. Harrison, F. R. Conway, commissioners.

Joseph Brazeau, claiming 360 arpents of land. (See page 123 of this book.)

The board are unanimously of opinion that this claim ought to be confirmed to the said Joseph Brazeau, or to his legal representatives, according to the concession.

67 Board adjourned until to-morrow at 9 o'clock A. M.

L. F. LINN,
F. R. CONWAY,
A. G. HARRISON.

See book of minutes, No. 6, pp. 315 & 318, (Dec. 52, page 305.)

SATURDAY, *12th Jauuary*, 1833.

F. R. Conway, esq., appeared pursuant to adjournment, having been authorized by a resolution of the board of commissioners of the 1st of December last, to receive evidence.

Benito Vasques, by his legal representative, Bernard Pratte, claim-garpents of land in front by the depth, comprised between the Mississippi and the public road leading to the village of Carondelet. See book B., p. 417; book D, p. 342; mins. No. 1, p. 412; No. 5, pp. 319 & 562; L. T. No. 4, p. 15.

Produces a paper purporting to be an original concession from Francisco Cruzat, dated 20th November, 1786.

M. P. Leduc being duly sworn, saith that the signature to the said concession is in the proper hand-writing of the said Cruzat.

Peter Chouteau, senr., being duly sworn, saith that the signature to the said concession is in the proper hand-writing of the said Cruzat. He further saith that immediately after getting the said concession, the said Benito Vasquez had a house built on said land, and had some of his hands employed in improving the same.

See book of Min's, No. 6, pp. 94 & 95.

THURSDAY, *November 7th*, 1833.

68 The board met pursuant to adjournment. Present L. F. Linn, A. G. Harrison, F. R. Conway, commissioners. Benito Vasquez, claiming 9 arpents of land in front by the depth from the Mississtppi to the main road leading to Carondelet. See page 95 of this book.

The board remark that in the petition. the words "in front" were evidently omitted after the word "nine." The board are unanimously of opinion that this claim ought to be confirmed to the said Benito Vasquez, or his legal representatives, according to the boundaries asked for in the petition and expressed in the concession.

The board adjourned until to-morrow at 9 o'clock, A. M.

L. F. LINN.
F. R. CONWAY.
A. G. HARRISON.

See book of Mins', No. 6, pp. 304, 305, & 307.

OFFICE OF THE RECORDER OF LAND TITLES,
St. Louis, 11th November, 1854.

I certify that the foregoing is correctly copied from the minutes on file in this office, of the proceedings of the board of commissioners appointed under the Act of July 9, 1832, entitled "An act for the final adjustment of land claims in Missouri," and the supplemental act of 2 March, 1833.

ADOLPHE RENARD,
U. S. Recorder of Land Titles in the State of Miisouri.

Bill of exceptions.

(Plaintiff objects to the testimony of witnesses, examined before old board as evidence tending to prove possession in Brazeau and his representatives.)

(Defendant disclaims offering testimony for any other pur-
69 pose than that to show what proceedings were had before commissioners, upon which disclaimer plaintiff withdraws objection.)

70 *Survey, No.* 3,078.

5. Survey 3,078, in favor of Joseph Brazeau, or his legal representatives.

Plat and description of the survey of a tract of land of 360 arpents, equal to 306.25 acres, situated in township 45, north of the base line, range 7, east of the principal meridian in the State of Missouri, executed in the month of February, 1837, by Joseph C. Brown, deputy surveyor, under instructions from Daniel Dunklin, surveyor of the public lands in the States of Illinois and Missouri, dated the 1st of February, 1837. This survey includes the following tracts, viz:

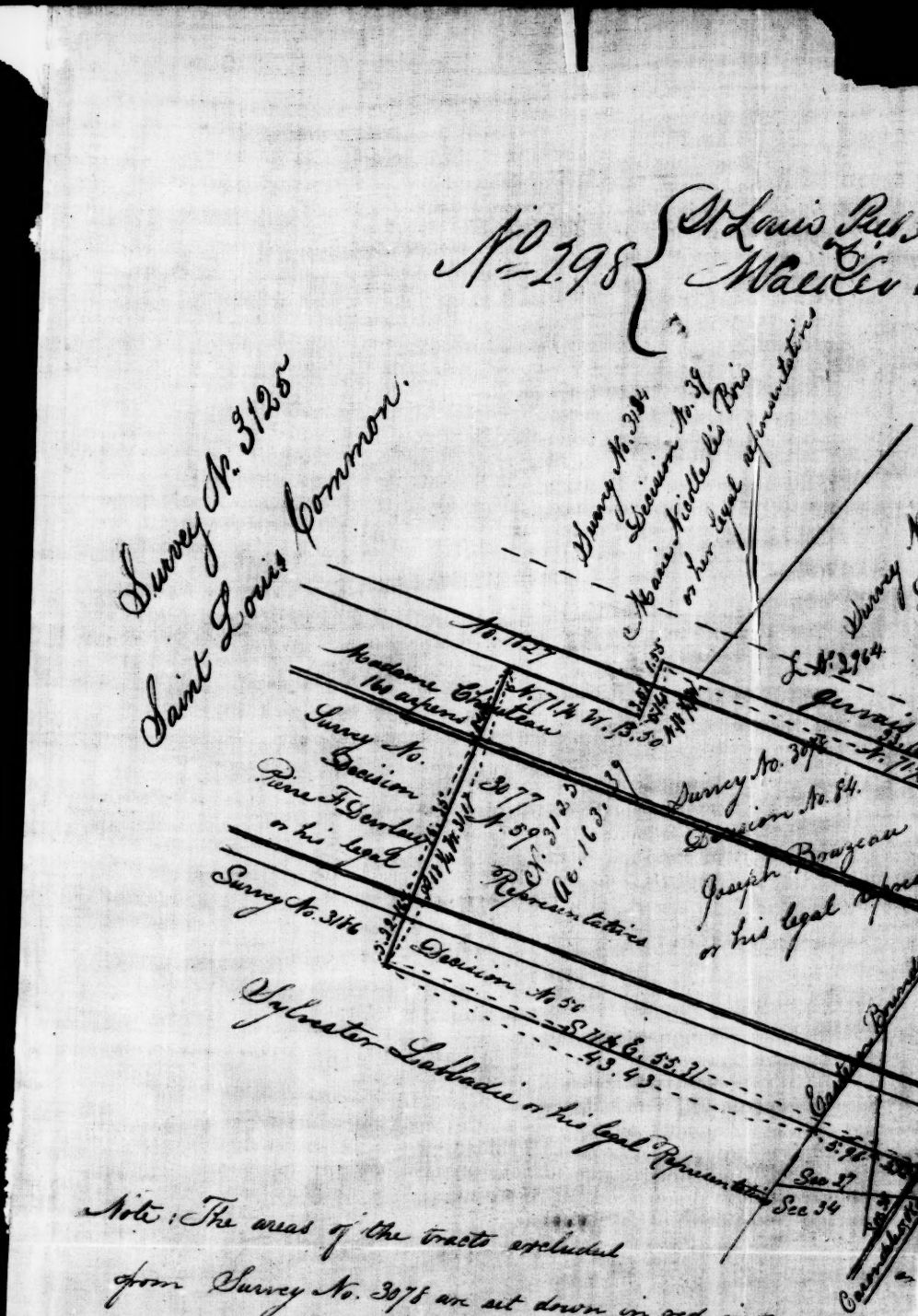
1. A tract of 10 arpents in front by the depth from the Mississippi river to the road leading from St. Louis to Carondelet, granted to Joseph Rrazeau, on the 20th of November, 1786, by Don Francisco Cruzat, lieutenant-governor of the Spanish province of Upper Louisiana, and designated on the plat below as survey No. 298.

2. A tract of 2 arpents in front, and south of the first tract, by the depth from the Mississippi river to the St. Louis and Carondelet road, purchased by Joseph Brazeau from Benito Vasquez, on the 26th of May, 1800, being a part of a tract of 9 arpents in front, granted to said Benito Vasquez, on the 20th of November, 1786, by
71 the lieutenant-governor Don Francisco Cruzat, and designated on the plat below as survey No. 332 and 3d, a grant of 12 by 30 arpents, made to said Joseph Brazeau on the 19th of November, 1799, by Charles D. Delassus, lieutenant-governor of the Upper Louisiana, and including the two first above-named tracts. This last grant was surveyed on the 28th of May, 1803, by James Mackay, deputy surveyor, as certified on the 21st of August, 1803, by Antoine Soulard, surveyor-general of Upper Louisiana, and confirmed to said Joseph Brazeau, or his legal representatives by the act of Congress of the 4th of July, 1836, entitled "An act confirming claims to land in the State of Missouri, and for other purposes," according to the decision No. 84 of the Board of Commissioners under the act of Congress of the 8th of July, 1832, entitled "An act for the final adjustment of private land claims in Missouri," and the act of Congress of the 2nd of March, 1833, supplemental thereto. The first and second tracts above-mentioned and designated as surveys No. 298, and 332, are on the list of claims, as to which the general principle of right was settled by the Board of Commissioners appointed under the act of Congress of the 2nd of March, 1805, entitled 'An act for
72 ascertaining and adjusting the titles and claims to land within the territory of Orleans and the district of Louisiana;" "but the confirmation not finally made, for want of ascertainments of quantities by survey," which list was returned to the surveyor of the United States lands in the Territories of Illinois and Missouri, by Frederick Bates, United States recorder of land titles.

(Here follows map marked page 72.)

73 *Description.*

Beginning at a stone on the right bank of the Mississippi river, corner to this survey and to fractional section twenty-six in township forty-five north, range seven east; thence north seventy degrees and fifteen minutes west twenty five chains and fifty-nine links to a stone eighteen inches long, twelve inches wide, four inches thick, marked with a cross, on the west side of the road leading from St. Louis to Carondelet, the southeast corner of survey, numbered three thousand one hundred and twenty-four, in the name of Antoine Soulard, or his legal representatives, and a corner to this survey; thence north seventy-one degrees and fifteen minutes west, with

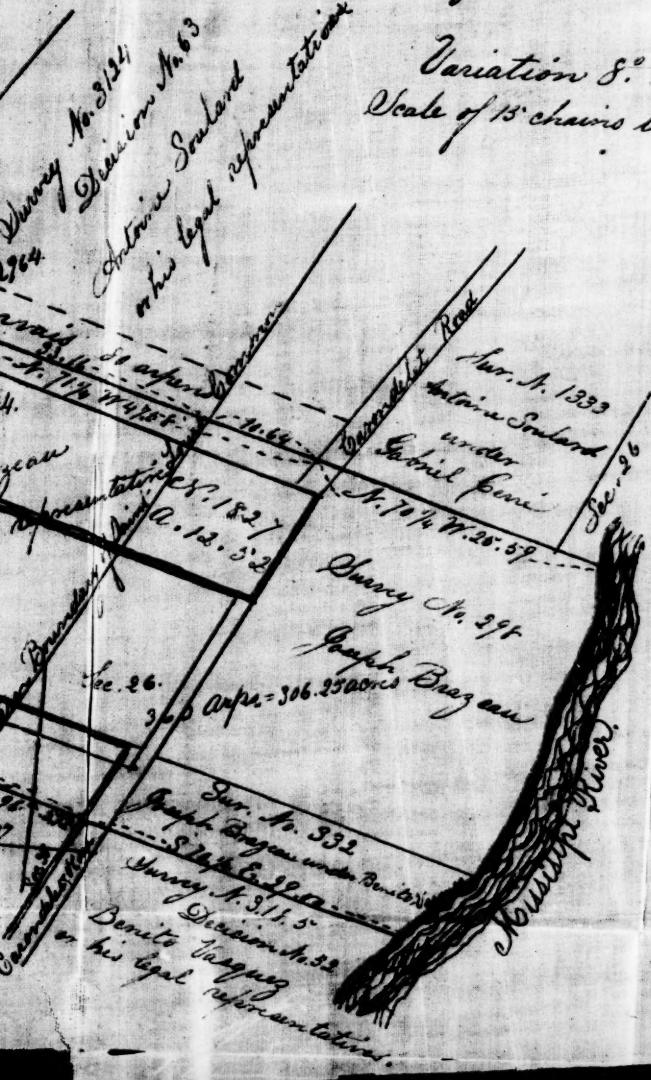


Note: The areas of the tracts excluded from Survey No. 3078 are set down in red ink.

Pub. Schools
Lev. et al. page 72.

T 45 N R 7 E of the 5th pl. M.

Variation 8° East
Scale of 15 chains to an inch.



the southern boundary of the Antoine Soulard survey at ten chains and sixty-four links, a stone, at the intersection with the eastern boundary of survey, numbered three thousand one hundred and twenty-five (Saint Louis Common;) at forty-three chains and eighty links, a stone eighteen inches long, twelve inches wide, five inches thick, marked with a cross, the southwest corner of the Antoine Soulard survey, and a corner to survey numbered three thousand one hundred and eighty-four, in the name of Marie Nicolle les Bois, or her legal representatives; and at forty-seven chains and fifty-eight links, a stone eighteen inches long, fourteen inches wide, eight inches thick, marked with a cross, corner to this and to the Marie
74 Nicolle les Bois survey; thence south eighteen degrees and forty-five minutes west, with a line of the Marie Nicolle les Bois survey, at one chain and fifty-five links, a stone sixteen inches long, six inches wide, six inches thick, at the intersection with the north boundary of Madame Chouteau's survey, numbered one thousand eight hundred and twenty-seven, which is also the north boundary of Gervais survey, numbered two thousand nine hundred and sixty-four; and at five chains and fourteen links, a stone sixteen inches long, fourteen inches wide, five inches thick, marked with a cross, corner to this and to the Marie Nicolle les Bois survey; thence north seventy-one degrees and fifteen minutes west, with a line of the Marie Nicolle les Bois survey, thirteen chains and fifty links to a stone twelve inches long, eight inches wide, four inches thick, marked with a cross, corner to this survey; thence south eighteen degrees and forty-five minutes west, at eight chains and forty-six links, a stone fifteen inches long, twelve or thirteen inches wide, two and a half inches thick, at the intersection with the south boundary of the Madame Chouteau survey, which is also the north boundary of survey numbered three thousand and seventy-seven, in the name of Pierre F. Devolsey or his legal representatives, at twenty-
75 four chains and thirty one links, a point of intersection with the north boundary of survey, numbered three thousand one hundred and eighty-six, in the name of Sylvester Labbadie, or his legal representatives; at twenty-five chains and ninety-five links a stone at the intersection with the south boundary of the Pierre F. Devolsey survey; and at thirty-one chains and seventeen links a stone twenty inches long, nine inches wide, five inches thick, the southwest corner of this survey; thence south seventy-one degrees and fifteen minutes, east at forty-three chains and forty-three links, a stone fifteen inches long, three inches thick, twelve inches wide at one end, and triangular or pointed at the intersection with the eastern boundary of the Saint Louis Common; at forty-nine chains and thirty-nine links a stone at the intersection with the line between sections twenty-six and twenty-seven, from which the corner to sections twenty-six, twenty-seven, thirty-four, and thirty-five bears south three chains and forty-eight links distant, and at fifty-five chains and thirty-one links a stone about sixteen inches long with a sharp point, twelve inches wide, and three or four inches thick, at the west edge of Carondelet road, corner to this survey; thence south seventy de-

grees and fifteen minutes east, twenty-nine chains to a post on the right bank of the Mississippi river, corner to this survey,
76 from which a paccan eighteen inches in diameter bears north seven degrees, west seventy-two links distant; thence up and along the right bank of the Mississippi river, north forty-three degrees east, nine chains and thirty-four links; thence north twenty-two degrees and fifteen minutes, east ten chains; thence north nineteen degrees, east eleven chains and fifty links; thence north three degrees and forty-five minutes, east three chains; thence north two degrees, west two chains and thirty-seven links to the beginning corner.

The following parts of survey No. 3,078, interfering with other surveys of older confirmations, or with the tracts sold or disposed of by the United States prior to the 4th of July, 1836, are hereby excluded from said survey No. 3,078, to wit:

1°. The southwest detached part of the southwest quarter of section 26, in township 45, north range 7 east, entered by Joseph Papin on the 28th of April, 1826, per certificate of entry No. 1,148, west of the of the Carondelet road, containing..... 22.16 acres.

2°. The part included in the St. Louis common, (survey No. 3,125,) confirmed to the inhabitants of St. Louis by the act of Congress of the 13th of June, 1812, entitled "An act making further provision for settling the claims to land in the
77 Territory of Missouri," containing..... 163.39 acres.

3°. The part of Madame Chouteau's survey, No. 1,827, of 160 arpens, confirmed by the act of Congress of the 29th of April, 1816, entitled "An act for the confirmation of certain claims to land in the western district of the State of Louisiana and in the Territory of Missouri," east of the St. Louis common and west of the Carondelet road, containing.. 12.52 acres.

4°. The part of the Gervais' tract of 80 arpens, (survey No. 2,964,) confirmed by the above-recited act of Congress of the 13th of June, 1812, east of the St. Louis common, containing..... 1.93 acres.

200.00 acres.

In all two hundred acres, for which a certificate of new location, numbered two hundred and one, is issued this day, the twenty-seventh of May, eighteen hundred and fifty-seven, in conformity with the provisions of the act of Congress of the fourth of July, eighteen hundred and thirty-six.

OFFICE OF THE SURVEYOR GENERAL
FOR ILLINOIS AND MISSOURI,
Saint Louis, May 27th, 1857.

The foregoing plat and description of survey, numbered three thousand and seventy-eight, are this day approved as recorded on

pages three hundred, three hundred and one, and three hundred and two of this book.

78 JNO. LOUGHBOROUGH,
Surveyor General.

A certified copy of survey 3,078, returned to recorder, on 2nd June, 1857.

OFFICE OF THE SURVEYOR GENERAL FOR ILLINOIS AND MISSOURI.
Saint Louis, October 10, 1857.

The foregoing plat and transcript of survey No. 3,078, and the certificate of the approval thereof, are correctly copied from pages 300, 301, 302, and 303 of the record book F, on file in this office.

JNO. LOUGHBOROUGH,
Surveyor General.

Plaintiff, in rebuttal, then read in evidence—

1. Certified copy of certificate of relocation to Joseph Brazeau's representatives.

Certificate of relocation to Jos. Brazeau, No. 201.—*Not assignable.*
OFFICE OF THE SURVEYOR GENERAL
FOR ILLINOIS AND MISSOURI
Saint Louis, May 27th, 1857.

The tracts of three hundred and sixty arpens of land confirmed to Joseph Brazeau or his legal representatives, by an act of Congress, approved on the 4th of July, 1836, see decision No. 84 of the board of commissioners under the acts of Congress of the 9th of July, 1832, and 2nd of March, 1833, has been regularly surveyed and numbered 3,078, and it appears by the report of the Commissioner of the General Land Office, and the Register of the land office, for the district in which said land is situated, that 2,216 acres of
79 the said [said] tract have been sold or disposed of, by the United States; and it further appears by the said survey No. 3,078, that 163.39 acres of the said tract are included in survey No. 3,125; Saint Louis common, 193 acres, in survey No. 29 64 of arpens in the name of Gervais, both confirmed by the act of Congress of the 13th of June, 1812; and 12.52 acres in survey No. 1,827 of 160 arpens confirmed to Madame Chouteau by the act of Congress of the 29th of April, 1816; these interferences and the sale aforesaid, making in all 200.00 acres.

The said Joseph Brazeau, or his legal representatives, is therefore authorized (in consequence of the sale and the interferences aforesaid) to enter the quantity of two hundred acres (200.00) of land in Missouri, subject to entry at private sale, in legal divisions and subdivisions, in conformity with the provisions of the said of act of Congress of the 4th of July, 1836.

JNO. LOUGHBOROUGH,
Surveyor General.

OFFICE OF THE U. S. RECORDER OF LAND TITLES,
Saint Louis, May 26th, 1864.

I certify that the above is a correct transcript of the certificate of relocation No. 201, for Joseph Brazeau or his legal representatives as recorded on page 201, of the book endorsed: "Register of certificates of relocation under act of Congress of 4th of July,
80 1836," of the surveyor general's office, now in charge of and on file in this office.

THOMAS S. NELSON,
U. S. Recorder of Land Titles.

2. Certified extract from list of claims confirmed under act of July 4th, 1836; also extract from schedule showing relocations.

81
82 Letters of the Commissioner of the General Land Office to the surveyor general at St. Louis, dated October 10th, 1836, Feb'ry 18th, 1839, May 31st, 1839, Sept. 15th, 1842, May 18th, 1857, June 28th, 1860.

Letters of Comm'r General, &c., Oct. 10th, 1836.

GENERAL LAND OFFICE,
10*th October*, 1836.

SIR: I now have to call your attention to the execution of the act of Congress of the 4th of July last, entitled "An act confirming claims to land in the State of Missouri, and for other purposes."
83 By the first section of this act the decisions of the board of commissioners in favor of claimants to land under the acts of the 9th of July, 1832, and 2nd of March, 1833, so far as they are contained in the reports made by the commissioners to the office in 1833, 1834, or 1835, and by it submitted to Congress during the last three sessions, are confirmed, with the exception of the particular claims enumerated in the latter part of the section. It is understood that the commissioners made a report upon certain claims in Arkansas, under the act of the 28th June, 1834, for the relief of J. E. Tholozon & Wm. Russell direct to the Senate, at the commencement of the last cession; but as such report was never sent to this office, nor by it submitted to Congress, those claims cannot, therefore, be considered as being embraced by the present act.

The second section of the law provides that if any portion of a claim confirmed by the act shall have been, previous to its passage, located under any law of the United States, or have been surveyed and sold by the United States, that in such event the confirmation made thereby shall confer no title on the claimants under this law, in opposition to the rights acquired by such location or sale; but the claimants are to be permitted to locate a quantity equal to that embraced by such interfering location or sale upon any unappro-
84 priated lands, subject to private sale, within either Missouri or Arkansas, according to the State in which such confirmed

claim may be situate; such locations to be made in conformity to the legal sub-divisions of the public lands, and so as not to interfere with the rights of other persons.

This reference to previous locations, under any law of the United States, is considered as embracing the lands included in any claim which has been heretofore recognized by the laws of the United States.

By the third section the locations under the 2nd section are to be entered with the register of the proper land office, who is required to make out, on the application of the party interested, and to transmit to this office, a certificate of such location, together "with the certificate of confirmation," and if it shall then appear that such certificate has been fairly obtained, according to the true intent and meaning of the act, a patent is to be issued therefor.

To carry this law into full effect, it will, therefore, be necessary for you to call upon the recorder of land titles for all the information in his possession which may aid you in having the claims surveyed with accuracy and at their proper places. The claims are then to be surveyed and connected with the lines of the adja-
85 cent claims and the lines of the public lands, in such manner as will enable you to calculate the extent of the interference, if any, with other confirmed claims, and the areas of those tracts of the public lands which may be affected by the survey of the claim. Upon the return of the surveys you will prepare a particular plat of each claim, showing the lines of the existing survey of the private claims or public lands, and transmit a copy thereof to the register of the proper district, in order that he may be enabled to mark thereon the interfering sales or locations, as exhibited by the books of his office. Duplicates of these plats are, at the same time, to be forwarded here for a similar comparison with the books of this office. So soon as this examination is made by the register, (who is to return the plats to your office,) and you are advised of the result of the examination at this office, you will issue your certificate in favor of each confirmee, specifying the quantity which he is authorized, in consequence of the interfering locations and sales, to enter with the register of any land office in the State in which the claim is situate. The new location must be made in each case in the name of the confirmee, and in the event of his decease in the name of his heirs, the law not contemplating an assignment of the right to locate;
86 and it must be made by taking such adjoining tracts, subject to private sale, as will together form one body or tract of land. These requirements are to be expressly stated in the body of your certificate.

You are then to furnish the recorder of land titles a plat of the survey of each claim, particularly describing the portion not interfered with by any location and sale, and for which a patent is to be issued, and also noting thereon the portion thus interfered with, and for which you have issued a certificate of new location, a monthly abstract of the certificates issued authorizing these locations, is to be sent to this office.

You are also, so soon as the surveys are made and approved, to furnish this office and the register for the proper district with diagrams showing the alterations which these surveys may occasion in the designations and arears of the adjacent tracts of the public lands.

I am, very res'p'y, &c.,

ETHAN A. BROWN, *Commissioner.*

The Surveyor General at St. Louis, Mo.

OFFICE OF THE U. S. RECORDER OF LAND TITLES,
St. Louis, May 26th, 1864.

I certify that the foregoing is a correct transcript from the
87 book containing the letters from the Commissioner of the General Land Office to the surveyor general of Illinois & Missouri of 1836, which book is now in charge of and on file in this office.

THOMAS S. NELSON,
U. S. Recorder of Land Titles.

Letter of 18 *Feb'y,* 1839.

GENERAL LAND OFFICE,
February 18, 1839.

SIR: I have received your letter of the 31st ulto. referring to the subject of mine of the 15th of the same month. I find that the municipal limits of St. Louis in 1812, according to the order of the Court of Common Pleas in 1809, are represented on your diagram D by the lines "ab, bc, cd, de," instead of the lines al, lm, mn, and thence up the river to "a." My opinion is in accordance with yours, that "the only question at issue was what were the limits intended by the law of 1812;" and I stated in my communication to you of the 15th ulto., that "on a careful examination of this case, I am of opinion that the act of 13th June, 1812, has reference to the corporate limits of St. Louis as they existed at the date of that act, the same having been established by the decree of the Court of Common Pleas of the district of St. Louis in 1809," and referred to them as being "represented on your diagram D by the lines al, lm, mn," when the reference should have been to the lines "ab, bc, cd, de," on that diagram, "and thence up the river to a."

88 I had considered all the statements in your report, but confined the instructions in my letter to you of the 15th ulto., to the land referred to in the special application in behalf of the school commissioners.

Considering, then, that the act of 13th June, 1812, has reference to St. Louis as it stood incorporated at the passage of that act, I am of the opinion that St. Louis is entitled, for the support of schools, to any land (vacant at that time) within those corporate limits, and which may not fall within any of the exceptions of the said acts of 13th June, 1812, and 26th May, 1824, and provided the aggregate

does not exceed one-twentieth part of all the vacant land within those limits.

As it may be proper to extend the instructions communicated in my letter to you of the 15th ulto., to other land in St. Louis than that specially applied for, you are requested to consider this as your instructions to "survey, designate, and set apart," for the support of schools in St. Louis, the vacant land above referred to, subject to the aforesaid exceptions and provisions, giving to the school commissioners the right of selecting what land shall be reserved for schools, provided more vacant land than 1-20 part of the area of the town shall be found applicable to such purposes.

89 You will please return to this office approved diagrams of such tracts as may be surveyed, designated, and set apart for the said purposes, and keep such a register of the areas as is required in the last paragraph of my letter before mentioned.

Very res'p'y, &c.,

JAS. WHITCOMB, *Commissioner.*

DAN'L DUNKLIN, Esq'r,
Surveyor General, St. Louis, Mo.

N. B.—This letter must not be construed to authorize the selection or appropriation, for the use of schools, of any tract or tracts reserved either for the United States magazine, arsenal, or for other military purposes.

JAS. WHITCOMB.

OFFICE OF THE U. S. RECORDER OF LAND TITLES,
St. Louis, May 26th, 1864.

I certify that the foregoing is a correct sranscript from the book containing the letters from the Commissioner of the General Land Office to the surveyor general of Illinois and Missouri of 1839, which book is now in charge of and on file in this office.

THOMAS S. NELSON,
U. S. Recorder of Land Titles.

Letter of May 31st, 1839.

GENERAL LAND OFFICE, *May 31st,* 1839.

90 SIR: In reference to private claims, confirmed by the act of 4th July, 1836, "confirming claims to land in the State of Missouri, and for other purposes," within the limits of which sales have been made at the United States Land Offices, New Madrid, certificates have been located, and other grants made prior to the said confirmatory law, sundry questions have been raised touching the true construction of the act, and materially affecting the rights of the respective parties in interest.

The late attorney-general, Mr. Butler, gave two opinions upon certain questions growing out of the said act.

These opinions may be found in the compilations of instructions

and opinions, part 2d, pages 1,042, 1,044, a copy of which will be mailed to you to-day.

His successor, Attorney-General Grundy, has had the same questions under consideration, and has expressed the opinion "that Congress alone possesses the power to make a fair and just disposition of the subjects in controversy, that much public mischief might arise should the executive branch of the gov't proceed to act at this time, and that Congress should be applied to at an early day in the next session to take such measures as justice to the respective parties may demand."

91 I have accordingly been instructed by the Secretary of the Treasury to "notify the parties of what is proposed to be done," and to "prepare a report to him on the whole matter, specifying the points on which further legislation is desirable," and "at the commencement of the next session," as he informs me, "he will have the attention of Congress called to the subject."

Pursuant to those instructions I request that you will apprize those concerned of the course proposed to be pursued in reference to the claims confirmed by the act aforesaid, within the limits of which sales have been made, locations by New Madrid certificates, or settlement claims exist.

You will therefore consider the general instructions in the communication to your predecessor of the 10th October, 1836, so far as the same requires you to issue certificates to confirmees for quantities interfered with by such sales, locations, or settlement rights, as are mentioned, as suspended until further orders, except in such cases as may be found entirely clear from doubt, and which may form the subject of special communications to you from this office from time to time.

You will cause, however, the work of surveying the claims confirmed by the act of 4th July, 1836, to proceed with all convenient dispatch in strict conformity to the instructions in the com-

92 munication of the 10th October, 1836, above referred to, from which the following is an extract:

"To carry this law into full effect, it will therefore be necessary for you to call upon the recorder of land titles for all the information in his possession which may aid you in having the claims surveyed with accuracy, and at their proper places. The claims are then to be surveyed and connected with the lines of the adjacent claims, and the lines of the public lands, in such manner as will enable you to calculate the extent of the interference, if any, with other confirmed claims, and the areas of these tracts of the public lands, which may be effected by the survey of the claim. Upon the returns of the surveys you will prepare a particular plat of each claim, showing the lines of the existing surveys of the private claims or public lands, and transmit a copy thereof to the register of the proper district, in order that he may be enabled to mark thereon the interfering sales or locations, as exhibited by the books of his office.

"Duplicates of these plats are at the same time to be forwarded here for a similar comparison with the books of this office."

One of the principal objects of desiring, under existing circumstances, that diagrams of all the claims be furnished to this office, and also to the registers', is, that these claims may be pro-
93 tected from sale, &c. It would also be proper for the registers to communicate to you the result of their examinations as to interferences in every case. Where there are sales, &c. of the character mentioned which conflict with claims confirmed by the act of 4th July, 1836, it is not designed that the plats shall be approved until Congress shall act upon the subject.

All the preliminary measures antecedent to the approval, however, it is desired shall be taken, with a view of consummating the matter as far as practicable and proper, and whereafter the result of the examinations by the register and this office is communicated to you, it shall appear that no interferences exist, that can be legally recognized, the plats of such claims can of course be approved, and separate plats of the same may be returned to the recorder; but as no patents are to issue for claims confirmed by the act of 4th July, 1836, according to Attorney-General Butler's opinion, of the 6th August last, the recorder will suspend the issuing of patent certificates for such claims until Congress shall have legislated on this point also.

You will, of course, proceed with the surveys of any claims confirmed by the Supreme Court of the United States in strict conformity to the such decrees, and furnish plats describing par-
94 ticularly the nature and extent of any interferences therewith, after observing, in reference to the preliminary examinations as to interferences, if any, a course similar to that indicated relative to claims confirmed by the act of 4th July, 1836.

Very resp'y, &c.,

JAS. WHITCOMB, *Commissioner.*

WILLIAM MILBURN, Esq'r,
Surveyor General, St. Louis, Mo.

OFFICE OF THE U. S. RECORDER OF LAND TITLES,
St. Louis, May 26th, 1864.

I certify that the foregoing is a correct transcript from the book containing the letters from the Commissioner of the General Land Office to the surveyor general of Illinois and Missouri of 1839, which book is now in charge of and on file in this office.

THOMAS S. NELSON,
U. S. Recorder of Land Titles.

Letter of Sept. 15*th*, 1842.

GENERAL LAND OFFICE, *September* 15*th*, 1842.

SIR: Questions have heretofore been raised, as the surveyor general has been advised, as respects the operation and effect of the act of the 4th July, 1836, "confirming claims to land in the State of Missouri, and for other purposes," in regard to claims confirmed

thereby, which are interfered with by other locations, and by sales, &c.

95 The whole subject has been examined by the present attorney general, Mr. Legare, who gave an elaborate opinion in the matter on the 7th December last.

Under date the 7th March last, my immediate predecessor submitted to the Senate of the United States in obedience to a resolution of that body, the construction held of that act, which was in accordance with the aforesaid opinion of Attorney General Legare.

In pursuance of instructions of the 9th instant from the Secretary of the Treasury, it has now become the duty of this office "to carry out the opinion of the attorney general, Congress not having legislated in the matter during its recent session."

That construction of the said act is to the following effect, that all claims confirmed by the afoaesaid act of the 4th July, 1836, are subject, and must yield to—

1st. Prior confirmations.

2nd. School sections.

3d. To ordinary sales, prior to the said confirmatory act of 4th July, 1836.

4th. To New Madrid locations under the act of 17th February, 1815.

Land Laws, (Clark's compilation,) page 667, chap. No. 248. This construction of the act recognizes—

5th. As the confirmee, the individual who, according to the
96 reports, presented the claim before the board (present claimant) as the assignee or legal representative of the grantee.

6th. And recognises the right of the individual whose claim may be interfered with by prior valid claims, to make his location of the amount or quantity of interference within the State in which the original claim may be in legal divisions and sub-divisions of the description of lands mentioned in the 2d section of the aforesaid act of 4th July, 1836, without confining them to one continuous body of land, or even to one land district.

7th. That patents may issue for the portions of the confirmed claims not interfered with.

But in that case, the attorney general states that he "should hold any claimant who accepted a patent for less than his claim, with an equivalent elsewhere, as forever estopped as against the United States and its privies."

The instructions of the 10th October, 1836, from this office to the surveyor general, printed instructions and opinions, part 2, page 967, No. 968, must therefore be considered as modified accordingly.

In accordance with those instructions, thus modified, you will exclude from your returns of the surveys of the claims confirmed by the act of the 4th July, 1836, all prior rights recognized by
97 the aforesaid construction as valid, and issue your certificates for the new location in favor of each confirmee "or his legal representatives" specifying the quantity he is authorized to locate on account of valid interferences with the original claim.

In the particular approved plates and notes of the survey of the claims confirmed by the said act of 1836, which may be interfered with by other rights, you should specially enumerate all the sales that should properly be excepted or excluded therefrom, with the areas, Nos. of reg'r's certificates, as also private claims, and their areas, with a reference to the latter in the reports.

Great care and precaution must be observed to exclude all such claims, and such only as should properly yield to the confirmation by the act of 1836.

The results of the examinations (see original instructions) at this office, and by the registers, when made known to you, in addition to your own examination, after reference to the recorder of land titles, will, it is expected, insure accuracy in the proceedings.

The parties entitled, as shown in the foregoing, are not confined to one land district nor to one continuous body of land, according to the aforesaid opinion, in making their new locations.

98 Should they determine therefore to take part of their new location in one district, and part in another or others, they must present the surveyor general's certificate to the register in whose district they may first locate, who will be required to endorse the tracts first located in part on that certificate, and then return the surveyor general's certificate to the party entitled, to be finally surrendered at the district land office, where the residue of the quantity to complete a location may be located.

It is designed only to issue one patent for one entire location.

When therefore a part of a location shall have been made, it is extremely desirable, (and you will so inform those interested,) that the residue of it be made within the same month, so as to consummate the matter promptly, and enable the department to collect from the monthly returns of the registers for the same month, each entire new location.

You are required to issue your certificate for the new locations according to the form A herewith, in favor of each confirmee "or his legal rep's," for the quantity he is entitled to locate on account of valid interferences, and to return to this office a monthly abstract of such certificates, according to the form B herewith.

Very resp'y, &c.,

THOS. H. BLAKE.
Commissioner.

SILAS REED, esq'r,
Surveyor General, St. Louis, Mo.

99 OFFICE OF THE U. S. RECORDER OF LAND TITLES,
St. Louis, May 26th, 1864.

I certify that the foregoing is a correct transcript from the book containing the letters from the Commissioner of the General Land Office to the surveyor general of Illinois and Missouri of 1842, which book is now in charge of and on file in this office.

THOMAS S. NELSON,
U. S. Recorder of Land Titles.

Letter of May 18th, 1857.

GENERAL LAND OFFICE, *May* 18, 1857.

SIR: In compliance with your request of 25th February last, I herewith transmit a transcript from the tract books of this office, showing all the entries in township 45, N. R. 7 E., with a separate designation of such entries as appear to conflict with the survey of private claims mentioned in your letter above referred to.

Very resp'y, &c.,

THOS. A. HENDRICKS,
Commissioner.

List of entries in township 45, N. of range 7 E., St. Louis district, Missouri, as they appear on the tract books of this office:

Part of section. On Main land.

Part of section. N. E. & N. W. fr'l ¼, sec. 8, 38 chs., 91 lks., Nathaniel Taylor, 6th May, 1841, certificate No. 13, 448—cancelled.

Part of section. One moiety of fr'l. sec. 26, 17 chs., 74 lks.;
100 Sally Adams, 18th June, 1836, certificate, No. 7,208—cancelled.

Part of section. S.½ of S. W.¼, sec. 25.

Part of section. S.½ of S. E.¼ on island, sec. 26, 59 chs., 70 lks.; Sally Adams, 18th June, 1836, certificate, No. 7,209—cancelled.

Part of section. One moiety of frl. sec. 24.

Part of section. N. W. fr. ¼ & N.½ S. W.¼, sec. 25; Island in Miss. river; N. E. fr. ¼ & N.½ of S. E.¼, sec. 26, 80 chs., 00 lks.; Sally Adams, 18th June, 1836, certificate, No. 7,210—cancelled.

Part of section. Fractional section, sec. 24.

N. W. fr. ¼ & N.½ S. W.¼, sec. 25.

Part of section. N. E. fr. ¼ & N.½ of S. E.¼, sec. 26, 160 chs., 00 lks.; Robert Duncan, 5 December, 1835, certificate, No. 5,812—cancelled.

Part of section. Fractional section, sec. 26, 35 chs., 119; Robert Duncan, 2d May, 1836, certificate, 6,808—cancelled.

Part of section. Fractional section, sec. 16; E. fract'l ½, sec. 21; N. E. fract'l. ¼, sec. 28, 588 chs., 68 lks.; selected for the use of schools.

Part of section. Fractional section, sec. 31, 25 chs., 95 lks.; Wilson S. Hunt, 27 November, 1823, certificate, 719—patented.

Part of section. E.½, sec. 33, 320 chs., 00 lks.; selected for the use of schools.

Part of section. Quarantine Isl., sec. 34, 178 chs., 85 lks.; swamp selection, act Sept. 28, 1850.

Part of section. S. W. detached part of S. W.¼, sec. 26.

Part of section. N. W. fr'l. ¼, sec. 35, 27 chs., 29 lks.; Joseph Papin, 28th April, 1826; certificate, No. 1,148—patented.

The foregoing is a list of all entries in township 45, north of range 7 east, as appears from the records of this office; and the fol-
101 lowing entries only appear to conflict with the surveys of

private claims mentioned in the surveyor general's letter to this office of 25th Feb'ry, 1857, viz:

Fract'l section 16, T. 45 N. R. 7 E.; E. fr'l. ¼, section 21, T. 45 N. R. 7 E.; N. E. fr'l. ¼ section 28, T. 45 N. R. 7 E; cont'g 588 65-100 a.; selected for use of schools.

E.½ section 33, S. 45, N. R. 7 E.; 320 a. Selected for use of schools.

S. W. detached part of S. W.¼, sec. 26; & N. W. fr'l ¼ part of S. W.¼, sec. 35; 45 N. R. 7 E., 27 29-100 acres entered by Joseph Papin, April 28th, 1826, per certificate of purchase, No. 1,148; patented.

OFFICE OF THE U. S. RECORDER OF LAND TITLES,
St. Louis, May 26th, 1864.

I certify that the foregoing is a correct transcript from the book contain'g the letters from the Commissioner of the General Land Office to the surveyor general of Illinois and Missouri of 1857, which book is now in charge of, and on file in this office.

THOMAS S. NELSON,
U. S. Recorder of Land Titles.

Letter of June 28th, 1860.

GENERAL LAND OFFICE, *June 28th*, 1860.

SIR: The Board of Directors of the St. Louis Public Schools, by their attorney, E. Casselberry, esqr., in view of the contemplated early close of the surveyor general's office at St. Louis, have called the attention of this office to the fact that there are still
102 within the limits of the out-boundary of St. Louis, as established by the surveyor general, on the 8th December, 1840, a number of unconfirmed lots to which the schools are entitled, which have not been assigned to them, and they ask that the attention of the surveyor general be directed to these lots, and the business brought to a close.

On the receipt of this, you are instructed to proceed without delay to designate and set apart, in the usual manner for the schools, all such "vacant town or village lots, out lots, and common field lots," as they may be lawfully entitled to, under the acts of 1812, 1824, and 1831, keeping in view the proviso to the 2nd section of the said act of 1812, and pursuant to the general instructions from this office to the surveyor general of 18th June, 1838, and 15th January, 1839; and where any doubt or difficulty may arise as to the right of the schools to any particular vacant lot, consultation with this office and a prompt report of the facts in such case, with your opinion thereon, is desired.

It is requested that this matter may engage your immediate attention, and be prosecuted with such assiduity as to secure its completion before the period fixed for closing your office.

Be pleased to acknowledge the receipt of this.

103 Very respectfully, your ob't serv't,

JOS. S. WILSON, *Commissioner.*

JOHN LOUGHBOROUGH, *Surveyor General, St. Louis, Mo.*

OFFICE OF THE SURVEYOR GENERAL FOR ILLINOIS AND MISSOURI.
St. Louis, July 25th, 1863.

I hereby certify that the foregoing is a correct copy of the original letter on file in this office.

WM. CUDDY,
Surveyor General.

[U. S. stamp.]

4. By consent of defendants, plaintiff reads in evidence the testimony of Chauvin L. Le Beau, from transcript of record of case of Papin *vs.* Ryan & Walker.

Chauvin V. Le Beau's test.

Chauvin V. Le Beau was then introduced as a witness by plaintiffs, who, being first duly sworn, stated: That Marie Brazeau, the niece of Joseph Brazeau, married John B. Duchouquette, in the year 1798; that she had six children by him, and died in the year 1817. The children were named, respectively, John B. Duchouquette, Brazeau Duchouquette, Joseph B. Duchouquette, Melanie Duchouquette, Louisa (sometimes called Reta) Duchouquette, and Therese Duchouquette; Joseph Brazeau died in the year 1815; that Marie Brazeau, the wife of John B. Duchouquette died in the year 1817; John B. Duchouquette, jr., died in the year 1844, leaving a widow named Virginia, who, some years ago, married Henry C. Lynch, and left an only child named Victoria, about fifteen or sixteen years old,
104 at this time; Joseph B. Duchouquette died in the year 1846, leaving a widow named Euphemia, and five children, named respectively, Laura, who intermarried with Theodore Roussin, Emma, Mary, John B. and Joseph B. Duchouquette, all now minors; Brazeau Duchouquette died in the year 1833, intestate and unmarried; Melanie Duchouquette intermarried with Theodore Papin, and had three children by him, and died in the year 1833. The children were respectively named, Adolphe, Henry and Mary. Mary first married a man by the name of Atchinson, who died, and afterwards married B. Gratz Moses; Theodore Papin, the husband of said Melanie, died in the year 1851; Louisa (sometimes called Rita) Duchouquette, married John B. Lesperance; had one child by him, named John B. D. Lesperance, now about twenty-three years old; Louisa or Reta, the wife of John B. Lesperance, died in the year 1838, and he died in the year 1849; Therese Duchouquette intermarried with Honere Picotte, in the year 1831, and is still alive; John B. Duchouquette, jr., the husband of Marie Brazeau, died in the year 1832 or '3.

5. Certificate of entry of Joseph Papin, No. 1,148.

Cert'f'c'e of entry of Joseph Papin.

LAND OFFICE AT ST. LOUIS, MO.,
28 *April*, 1826.

It is hereby certified that, in pursuance of law, Joseph Papin, of St. Louis county, Mo., on this day, purchased of the register

105 of this office the lot or northwest fr'l ¼ sec. 35, & the S. W. detached part of S. W. fr'l ¼ of section number twenty-six, of township number forty-five, north, in range number seven east, containing twenty-seven & 29-100 acres, at the rate of one dollar twenty-five cents per acre, amounting to thirty-four dollars eleven cents; for which the said Joseph Papin has made payment in full, as required by law.

Now, therefore, be it known, that on presentation of this certificate to the Commissioner of the General Land Office, the said Joseph Papin shall be entitled to receive a patent for the lot above described.

W. CHRISTY, *Register.*

GENERAL LAND OFFICE, *May* 11, 1864.

I, James M. Edmunds, Commissioner of the General Land Office, do hereby certify that the annexed is a true and literal exemplification of the original St. Louis certificate of purchase, No. 1,148, now on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

J. M. EDMUNDS,
Commissioner of the General Land Office.

106 6. Plaintiff gave in evidence an act of Congress, entitled An act for the relief of Phineas Underwood, etc.

Act for the relief of Phinehas Underwood.

Be it enacted, &c., That Phinehas Underwood be, and he is hereby, authorized to enter with the proper register any unlocated quarter section of land in the State of Illinois, within one year after the passage of this act, and shall be entitled to a patent therefor, as in other cases: *Provided*, That such quarter section shall have been previously offered at public sale: *And provided also*, He shall, prior to making such location, surrender, to the Commissioner of the General Land Office, a patent which issued to Eli B. Mott, on the thirty-first of August, one thousand eight hundred and eighteen, for the northwest quarter of section twenty-two, of township six north, in range eight west, of the Illinois bounty lands.

SEC. 2. *And be it further enacted*, That the time for petitions under the provisions of an act entitled "An act enabling the claimants to lands within the limits of the State of Missouri, and Territory of Arkansas, to institute proceedings to try the validity of their claims," shall be, and the same is hereby, extended to the twenty-sixth day of May, in the year one thousand eight hundred and twenty-eight.

Approved May 22d, 1826.

107 7. Copy of application of school board for assignment.

Ap'l'c'l'n of school b'd for assignm't.—Proceedings of the board of the Saint Louis Public Lands.

SAINT LOUIS, *January 27th*, 1857.

On motion of Mr. Patrick, it was—

Resolved, That the president of the board be, and he is hereby, authorized and required to apply in writing to the Surveyor General of the United States for the district of Illinois and Missouri for the assignment for the support of schools in the former town, now city, of Saint Louis, in the State of Missouri, of the following-described lots of land in said former town, now city, in township 45 north range, 7 east in said State, viz:

All the land lying between survey number eighteen hundred and twenty-seven on the north, survey number three hundred and seventy one on the south, the east line of the St. Louis commons on the west, and Carondelet Avenue on the east.

I, George M. Fichtenkam, secretary of the Board of President and Directors of the St. Louis Public Schools, do hereby certify that the foregoing is a true and correct copy of the record of proceedings of said board on the 27th day of January, 1857.

In testimony whereof, I, the said George M. Fichtenkam, have subscribed these presents as secretary and have attached
108 thereto the corporate seal of said board.

GEO. M. FITCHTENKAM.

St. Louis, June 9, '64.

8. Copy of resolution of acceptance by board of assignment, No. 407.

Acceptance by board of survey No. 407.—Proceedings of the Board of the Saint Louis Public Schools.

SAINT LOUIS, *May 22nd*, 1861.

Mr. Wyman, the president, laid before the board United States survey No. 407. (of the series of St. Louis lands,) dated June 3d, 1861, by which the Surveyor General of the United States for the district of Illinois and Missouri assigned, designated, and set apart for the support of schools in this city, thirty acres and twenty-hundredths of an acre of land, situated in the former town, now city, of St. Louis.

The president also informed the board that on the 4th day of June, 1861, he, as president of the board, accepted of said assignment, and of the land described in said survey for and on behalf of this board.

Whereupon Mr. King offered the following resolution, which, on motion of Mr. Corbitt, was adopted:

Resolved, That the said acts and proceedings of the president of this board be, and the same is hereby, ratified, confirmed, and ap-

proved, and the said assignment, and the land described in
109 said survey are hereby again accepted by this board.

I, Geo. M. Fitchtenkam, secretary of the Board of President and Directors of the Saint Louis Public Schools, do hereby certify, that the foregoing is a true and correct copy of the record of proceedings of said board had on the 22nd day of May, 1861.

In testimony whereof, I, the said Geo. M. Fichtenkam, have subscribed these presents as secretary, and have attached thereto the corporate seal of said board.

GEO. M. FITCHTENKAM.

St. Louis, June 9, '64.

Defendant then offered and read in evidence a letter of the Commissioner of the General Land Office to the surveyor general, dated Sept. 7th, 1861.

Letter of Sur. Gen'l., Sept. 7th, 1861.

GENERAL LAND OFFICE,
September 7th, 1861.

SIR: This office has had under examination the applications to the surveyor general of the public schools of St. Louis, under the acts of 1812, 1824, and 1831, to have set apart certain tracts, or parcels of vacant lands, as the property of those schools under those laws, viz:

First. Tract in parallelogram form, lying between Madame Chouteau's survey No. 1827, on the north school survey, No. 371, on the south; Carondelet avenue on the east, and the east line of St.
110 Louis commons on the west.

Second. A small, irregular parcel of land, bounded on the south by [by] school survey No. 371, on the west by Carondelet avenue; on the east by Bent's survey No. 99, and on the north by a western extension of the north line of said Bent's survey.

Third. That portion of the triangular parcel, the Papin entry, patented in 1826, which lies east of the St. Louis common, embracing portions of fractional sections 26 and 35, all of said tracts being in in township 45, north of range 7 east.

We now pooceed to deal with the parallelogram under first head. It embraces the portion lying east of St. Louis common, of the following surveys, viz:

(1st.) Brazeau's survey No. 3,078, decision No. 84, claim founded on written title Nov. 19, 1799, from Lieut. Gov'r Delassus.

(2d.) Devolsey's survey No. 3,077, decision No. 58, claim founded on concession from Lieut. Gov'r St. Ange, Sept'r 15, 1767.

(3d.) Labbadie's survey No. 3,186, decision No. 50, founded on written title from Lieut. Gov'r Perez, Aug. 9th, 1768.

(4th.) Brselloux's survey No. 3,121, decision No. 66, founded on written title from Lieut. Gov. Ange, April 20, 1768, and—
111 (5th.) The Papin tract, as described under the third head.

More than one-half of this parallelogram on the north and east side has been allotted to the schools by survey No. 407, in diagram

certified by the present surveyor general, June 10, 1861, taking all of the Papin entry east of the commons line. The said school survey No. 407 also embraces all of the small irregular parcel of land described under second head.

The plat herewith, marked A, shows by a blue line the parallelogram "first," by a yellow shade the parcel "second," and by a red line the portion of Papin thus allotted to the schools by survey No. 407, taking off parcels on the east side of Brazeau 3,078, Devolsey 3,077, Labbadie 3,186, and Barsaloux 3,121.

This special allotment of 10 June, 1861, by Surveyor General Cuddy, done under his responsibility as surveyor general, must be subject to any legal claims under Papin and others.

In regard to the allotment of the residue of the said parallelogram described under first head, being that portion of said tract west of the west line of the above-mentioned school allotment No. 407, it is now the duty of this office to determine the question as to the propriety of the allotment of the same to the schools as vacant public lands.

112 The several claims of Brazeau, Devolsey, Labbadie, and Barsaloux, are all entered in the report of the last board in Missouri, under acts of 9th July, 1832, and 3d March, 1853, Doc. No. 59, H. Reps., 24 Congress, 1st sess., pages 255, 185, 165, 207, and are all confirmed by the act of Congress approved 4th July, 1836.—(U. S. Stats at Large, v. 5, p. 127.)

The confirmation by the act of 4th July, 1836, on the conditions stipulated in the 2d section, conferring no title in opposition to the rights acquired by prior location or purchase, but giving indemnity, the question now arises whether there were such prior rights. That Brazeau, Devolsey, Labbadie, and Barsaloux, had imperfect titles to the premises long anterior, under the Spanish government, is shown by the record.

The United States, by acts of 3d March, 1811, and 17 July, 1818, shielded from sale, or other disposal, all lands covered by claims which had been duly filed as these were, "till after final decision of Congress thereon." What action, then, did Congress have on these claims in the way of final decision? We find that by the act of 26 May, 1824, (Stat's 4, 52,) Congress did authorize the adjustment of such claims by the judiciary. The 5th section of that act required

113 the claim to be brought before the courts within two years from the passage of the act, its terms being as follows:

"That any claim to lands, tenements, or hereditaments within the purview of this act, which shall not be brought by petition before the said courts within two years from the passage of this act, or, which, after being brought before said courts shall, on account of the neglect or delay of the claimant, not be prosecuted to a final decision within three years, shall be forever barred both at law and (in) equity, and no other action at common law or proceeding in equity shall ever thereafter be sustained in any court whatever, in relation to said claims." The 7th section of said act orders, "that in each and every case in which any claim tried under the provisions

of this act shall be finally decided against the claimant, and in each and every case in which any claim, cognizable under the terms of this act, shall be barred by virtue of any of the provisions contained therein, the land specified in such claim shall forthwith be held and taken as a part of the public lands of the United States, subject to the same disposition as any other public land in the same districts."

The period for bringing these claims before the courts was by acts of May 22, 1826, and May 23, 1828, extended to May 26, 1829, so from the date last mentioned, until the passage of the act of
114 9th July, 1832, creating the last board, the lands covered by Brazeau, Devolsey, Labbadie, and Barsaloux, said claims not having brought before the courts, had fallen into the mass of the public domain, in virtue of the conditions in the 7th section of the said act of 26 May, 1824. During this period the school act of 27 January, 1831, was passed, taking hold of the vacant parcels, and, in the opinion of this office, the schools acquired title to the land now claimed as vacant land, subject to the limitations in the acts of 1812, 1824, and 1831. So we decide that the parcel of land on the west side of the said parallelogram (first) designated by a, b, c, d, e, on diagram A, herewith, is liable to be set apart to the schools, with the condition "that such allotment shall be subject to any valid adverse rights in law or equity, if such exist, in virtue of the claims of Brazeau, Devolsey, Labbadie, and Barsaloux, or any other adverse rights;" and you will be careful to express these conditions in your certificate to the diagram of allotment.

The tracts described under the second and first heads in the foregoing, have been allotted by the surveyor general's act of 10th June, 1861, hereinbefore mentioned, and therefore any further action in the matter by this office is dispensed with.

In regard to the small irregular parcel described under the
115 second head, it may be proper to add further that, although mentioned as an ancient "chemin" or passway, and hence, according to the views of this office as expressed in letter of 28th March, 1856, to the surveyor general, of a class of lands not liable to sale or entry, that being the main question then presented, yet, as a vacant parcel I find nothing in any law, nor any just ground, for its exclusion from the school grant, which is one also for public benefit; and said parcel cannot be claimed as part of Bent's survey No. 99 the western line of that survey having been long lince established and acquiesced in, as shown by the survey of the same in 1818, patented more than thirty-four years ago.

You will notify all parties interested of this decision; and, if appeal be not taken within say thirty days, or longer if you deem it necessary, from the service of your notice, you will make the allotment in the manner herein directed, with the qualification above stipulated and underscored; but if an appeal should be taken, you will defer proceedings and await the result of the appeal.

Very respectfully, your ob't serv't,

J. M. EDMUNDS, *Commissioner.*

WM. CUDDY, Esq., *Surveyor General, St. Louis, Mo.*

116 NOTE.—You will bear in mind that in any action you may have in the foregoing case, or in any case hereafter, pursuant to any general or special instructions to set apart school lands under the acts of 1812, 1824, and 1831, that—

(1st.) Such setting apart shall not embrace any land which may have been reserved for military purposes;

(2d.) Nor shall it embrace any tract withdrawn for any public uses, as we have no right to treat such as vacant lands liable to school appropriation.

(3rd.) No land shall be set apart in excess of "one-twentieth part of the whole lands," in the general survey of the town, that being an express limitation of law.

J. M. EDMUNDS, *Comr.*

OFFICE OF THE SURVEYOR GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, October 7th, 1861.

The foregoing letter is correctly copied from the original on file in this office.

WM. CUDDY,
Surveyor General.

Def'ts admiss., &c.

And it was then admitted by the defendant that the assignment given in evidence by plaintiff had been delivered to plaintiff; the survey had been completed, and the whole instrument given in evidence, marked survey 407, had been approved and recorded
117 by the Surveyor General in the books of his office, and that no appeal was taken by either of the parties interested in the reservations and claims mentioned in said letter of the commissioner, dated Sept. 7th, 1861, from the action of the surveyor general in making such assignments to the schools before the said seventh day of September, 1861.

And this was all the evidence in the cause.

Whereupon the plaintiff offered and asked the court to give the following instructions as declarations of law:

Instructions for pl'ff.

PUBLIC SCHOOLS
vs.
ISAAC WALKER *et al.*

The papers, documents, and oral proof produced by plaintiff are prima facie evidence that the land in controversy has been legally surveyed, designated, and set apart to the town (now city) of Saint Louis, for the support of schools therein.

The court, sitting as a jury, will find for the plaintiff, if the court believes that the documents, papers, plats, and surveys given in evidence by plaintiff are genuine; that the oral testimony offered
118 by plaintiff istrue, and that the land in controversy is within

the boundaries of the corporation of 1809, within the out-boundary of December 8th, 1840, and also within the school assignment and survey No. 407, read in evidence.—Refused. C. B. Lord.

Instructions for pl'ff.

PUBLIC SCHOOLS
vs.
ISAAC J. WALKER *et al.*

If the land embraced within Papie's patent is within the limits of the out-boundary survey given in evidence by plaintiff, it was reserved from sale and entry, and the patent is void, although at the time of the entry and the issuing of the patent, the land had not been designated and set apart to the town of St. Louis for the support of the schools therein.

If the land embraced within the entry and patent of Papin, under which defendant claims, lies wholly within the out-boundary of St. Louis, as established under the authority of the United States, pursuant to the first section of the act of 13th June, 1812, and if said land lies wholly within the limits of the assignment and survey No. 407, given in evidence by plaintiff, and if said assignment and survey is a genuine document, then the entry of and patent to Papin were illegal and void, and no title passed by said entry and patent.—Refused. C. B. Lord.

119 *Instructions for plaintiff.*

PUBLIC SCHOOLS
vs.
ISAAC WALKER *et al.*

The designation of land and survey No. 407 for the public schools given in evidence by plaintiffs created a better title than, and must prevail over, any title derived from the patent issued to Papin in the year 1826, given in evidence by defendant.

There is no evidence in the cause tending to show that Brazeau's concession for 12 by 30 arpens was confirmed by operation of the act of Congress of June 13th, 1812.

There is no evidence in the cause tending to show that the land in controversy was, on the 13th of June, 1812, "rightfully owned or claimed" by Brazeau or his legal representatives within the meaning of the act of Congress of June 13th, 1812.—Refused. C. B. Lord.

Instructions for plaintiff.

PUBLIC SCHOOLS
vs.
ISAAC WALKER *et al.*

The concession by Delassus to Brazeau and the survey by Soulard, given in evidence by the defendant, do not prove a "rightful owner-

ship or claim" in Brazeau or his legal representatives to the land in controversy, within the meaning of the second section of the act of June 13th 1812. To constitute such "rightful ownership or claim" there must be proof of cultivation, possession, or inhabitation prior to December 20th, 1803, by Brazeau or those under whom he
120 claimed. And in the absence of such proof in this case, the defendant has failed to show that the land in controversy was "rightfully owned or claimed" on the 13th of June, 1812, within the meaning of the second section of the act of June 13th, 1812.

The concession and order of survey made to Joseph Brazeau by Delassus, in 1799, and the survey made in pursuance thereof by Soulard, as given in evidence by defendant, vested no title in said Brazeau to the property so surveyed by him.—Refused. C. B. Lord.

Instructions for plaintiff.

PUBLIC SCHOOLS
vs.
ISAAC WALKER *et al.*

If the land in controversy was surveyed and sold to Papin by the United States prior to July 4th, 1836, it was not confirmed to Brazeau by the act of July 4th, 1836, although such survey and sale to Papin was not made in conformity with any law of the United States, and, although such survey and sale were void, and as against the title set up by plaintiff.

Brazeau's survey having been recommended for confirmation by the board of commissioners, "according to the concession," and not "according to survey," the survey of Soulard is not conclusive evidence of the extent of said confirmation and the government
121 is not precluded by said survey, and survey 3,078, given in evidence by defendant, determines the right of the confirmee and of the defendant in claiming an outstanding title in Brazeau's representatives.—Refused. C. B. Lord.

Instructions for Plaintiff.

PUBLIC SCHOOLS
vs.
ISAAC WALKER *et al.*

Survey 3,078, as approved by the surveyor general, given in evidence by defendant, is conclusive and binding on defendant as to the boundaries and quantity of land confirmed, and if the land in controversy is within one of the reservation, enumerated in said survey and the certificate thereof, then the confirmation does not embrace the land so enumerated as reserved.

The designation of land and survey No. 407 for the Public Schools, given in evidence by the plaintiffs, creates a better title than, and must prevail over, the title of Brazeau and his representatives, emanating under the act of July 4th, 1836, as given in evidence by defendant.—Refused. C. B. Lord.

Instructions for plaintiff.

PUBLIC SCHOOLS
vs.
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122 If the land in controversy is within the limits of the out-boundary and assignment given in evidence by plaintiff, then plaintiff is entitled to recover in the absence of proof of inhabitation, cultivation, and possession of the land in controversy prior to December 20th, 1803, or of a confirmation of the same under any act of Congress passed prior to the 13th of June, 1812.

The court declares the law to be that, although it may appear from the evidence that the defendant Walker and those deriving title under him have had exclusive adverse possession, under a claim of ownership, since 1840, of the land sued for, and although it may further appear that the land in controversy has been since 1830 a tract of land with specific boundaries and known location; these facts, if found, do not constitute a valid defence under the statute of limitations, if it appears in evidence that the land in controversy was surveyed, designated, and set apart to the town of St. Louis for the use of the schools therein, within ten years before the commencement of this action.—Refused. C. B. Lord.

Instructions for plaintiff.

PUBLIC SCHOOLS
vs.
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123 Is the court believes from the evidence that all the plats, documents, papers, and other instruments read in evidence by the parties respectively, are genuine, that the oral testimony given in the cause is true, that the premises in controversy are within the boundaries of the out-boundary survey of December 8th, 1840, within the boundaries of the corporation of St. Louis, as created on the 9th of November, 1809, and within the boundaries of the assignment to the plaintiffs evidenced by survey No. 407, the court will find for the plaintiffs, although the court may also find that the land in controversy is within the boundaries of the patent from the United States to Joseph Papin, and within the boundaries of the U. S. Survey No. 3,078. Refused. C. B. Lord.

Although the court may believe from the evidence that the land in controversy is embraced in the boundaries of the confirmation to Joseph Brazeau, under the act of July 4th, 1836, and although the court may believe that the claim so confirmed was presented for the investigation thereof to the board of commissioners appointed by the act of Congress, approved March, 2d, 1805, and was considered by said board, the court will still find for plaintiff, if it appears from the evidence that the claim so presented was rejected by said board.—Refused. C. B. Lord.

124 The proceedings of the late board of commissioners, under

the act of 1806, and the proceedings of the late board of commissioners, under the acts of July 9th, 1832, and March 2d, 1833, recommending Brazeau's claim for confirmation, and the act of July 4th, 1836, are not evidence that the land embraced in Brazeau's concession was rightfully owned or claimed by Brazeau, or his representatives within the meaning of the act of June 13th, 1812.—Refused. C. B. Lord.

Bill of exc'p's.

All of which instructions the court refused, to which action of the court the plaintiff there immediately excepted.

And the defendant asked the following instructions:

Def'ts ins'ts.

If the court believe from the evidence that the land in controversy is embraced in the land confirmed to Joseph Brazeau by the act of Congress of July 4, 1836, given in evidence, and that the claim to the land, as confirmed, was presented for the investigation thereof to the board of commissioners appointed by the act of Congress, approved March 2, 1805, given in evidence, and was considered by said board, then the court should find for the defendants.—Refused, C. B. Lord.

If the court believe from the evidence that the land in controversy is embraced in the patent to Papin given in evidence, and that said patent is genuine, then the court should find for the
125 defendants; which the court refused.

And the court, of its own motion, gave the following instruction, as a declaration of law governing the causes.

Instruction of the court.

BOARD OF PUBLIC SCHOOLS
vs.
ISAAC WALKER *et al.*

The papers, documents and oral proof exhibited on the part of the plaintiff, are prima facie evidence of the title in the plaintiff, but if the land in controversy is embraced in the tract of land claimed by Joseph Brazeau, as conceded to him by Charles Dehault Delassus, in 1779, and if Joseph Brazeau presented the said claim, embracing the land in question for investigation, to the board of oommissioners appointed by the act of Congress, approved March 2d, 1805, and if said claim was confirmed to said Brazeau by the act of Congress, passed July 4th, 1836, the plaintiff cannot recover in this suit, and the fact that the United States conveyed the same by patent to Joseph Papin, in 1826, can make difference, although the title so conveyed to said Papin may be held to be a better title than that of Brazeau, under the act of 1836.

C. B. LORD.

126 To the giving of which instruction the plaintiff immediately excepted.

And on the 16th day of June, 1864, the court found the issues and rendered judgment for defendants.

And afterwards, to wit, on the 16th day of June, 1864, and in due time, the plaintiff filed his motion for a new trial, as follows:

In the St Louis Land Court.—March term, 1864.

Mo. for new trial.

BOARD OF PRESIDENT AND DIRECTORS OF THE St. Louis Public Schools
vs.
ISAAC WALKER & PATRICK RYAN.

And now comes the plaintiff, by his attorney, and moves the court to set aside the judgment rendered in this cause, and to grant plaintiff a new trial. And for reason in support of said motion plaintiff submits:

1. That the court erred in granting instructions for defendant, which ought to have been refused.
2. The court erred in refusing instructions for plaintiff, which ought to have been granted.
3. The judgment is against the evidence.
4. The judgment is against the law.
5. The judgment is against the law and the evidence.

JAMES TAUSSIG, *for Plaintiff.*

127 Which motion the court overruled and the plaintiff imediately excepted to the action of the cverruled said motion.

Bill of exc'p's.

Whereupon plaintiff, by his attorney, tenders this its bill of exceptions, and asks that a record be made of the matters and proceedings therein set forth; that said bill of exceptions be signed and sealed, and that an appeal be granted to plaintiff; all of which is done.

[SEAL.] C. B. LORD.

STATE OF MISSOURI, *County of St Louis. ss*:

I, Robert White, clerk of the St. Louis Land Court within and for said county, certify that the foregoing transcript to be a true and correct copy of the record and [and] proceedings (as required) had in the case of The Board of President and Directors of the St. Louis Public Schools, plaintiffs, and Isaac Walker and Patrick Ryan, defendants, as fully as the same remains on record in my office.

In testimony whereof, I hereto set my hand and affix the seal of our said court, at office, in the city of St. Louis, this first day of October, A. D. 1864.

[SEAL.] ROBERT WHITE, *Clerk.*
By CHAS. LEVY, D. C.

[5-cent revenue stamp.]

128 And afterwards, to wit, at the March term, 1866, of the said Supreme Court, the following further proceedings were had in said cause, to wit:

WESNESDAY, *May* 16*th*, 1866.

BOARD OF PRESIDENT AND DIRECTORS OF Public Schools, plaintiff in error,
vs.
ISAAC WALKER *et al*, defendant in error.

Statement of def't in error filed. Cause continued.

And afterwards. to wit, at the March term, 1867, of said court, the following further proceedings were had in said cause, to wit:

WEDNESDAY, *March* 20*th*, 1867.

BOARD OF PRESIDENT AND DIRECTORS St. Louis Public Schools, plaintiff in error,
vs.
ISAAC WALKER *et al.*, defendant in error.

Now again come the parties aforesaid, by their respective attorneys, and this cause coming on for a hearing the parties move the court that the same may be set for a hearing on the second day of April next; which is accordingly done.

129 And afterwards, to wit, at the same term of said court, the following further proceedings were had in said cause, to wit:

TUESDAY, *April* 2*nd*, 1867.

BOARD OF PRESIDENT AND DIRECTORS OF THE St. Louis Public Schools, plaintiffs in error,
vs.
ISAAC WALKER *et al.*, defendants in error.

Now again come the parties aforesaid, by their respective attorneys, whereupon the argument progresses and not being finished, is laid over till to-morrow, Wednesday, the 3rd inst.

And afterwards, to wit, at the same term of said court, the following further proceedings were had in said cause, to wit;

WEDNESDAY, *April* 3*rd*, 1867.

BOARD OF PRESIDENT AND DIRECTORS OF THE St. Louis Public Schools, plaintiffs in error,
vs.
ISAAC WALKER *et al.*, defendants in error.

Now again come the parties aforesaid, by their respective attorneys, whereupon the argument progresses, and not being finished, is laid over till to-morrow, Thursday, the 4th inst.

130 And afterwards, to wit, at the same term of said court, the following further proceedings were had in said cause, to wit:

THURSDAY, *April 4th*, 1867.

BOARD OF PRESIDENT AND DIRECTORS OF THE St. Louis Public Schools, plaintiffs in error,
vs.
ISAAC WALKER *et al.*, defendants in error.

Now again come the parties, by their attorneys, whereupon the argument progress, and being finished, this cause is submitted to the court. Brief of defendants in error.

And afterwards, to wit, at the same term of said court, the following further proceedings were had in said cause, to wit:

Error to the St. Louis Court Land.

MONDAY, *April 22d*, 1867.

THE BOARD OF PRESIDENT & DIRECTORS OF the St. Louis Public Schools, plaintiffs in error,
vs.
ISAAC WALKER AND PATRICK RYAN, defendants in error.

Now again come the parties aforesaid, by their respective attorneys, and the court being sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment ren-
131 dered herein by the St. Land Court be in all things affirmed, and stand in full force and effect; and that the said defendants recover of the said plaintiffs in error their costs and charges herein expended, and have execution therefor.

Opinion filed.

And afterwards, to wit, on the 24th day of April, A. D. 1867, said plaintiffs in error appeared in court and filed their bond in said cause; which bond is in the words and figures following, to wit:

Know all men, by these presents, that we, the Board of President and Directors of the St. Louis Public Schools, as principal, and Julius Conrad, and Chas. F. Meyer, as securities, are held and firmly bound unto Isaac Walker and Patrick Ryan, in the full and just sum of one thousand dollars, to be paid to the said Walker and Ryan, or to their heirs, executors, akministrators, or assigns; to which payment, well and truly to be made, we bind ourselves executors, heirs and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this 24th day of April,
132 in the year of our Lord one thousand eight hundred and sixty-seven.

Whereas lately, at the March term, 1867, of the Supreme Court of the State of Missouri, in a suit depending in said court, between the Board of President and Directors of the St. Louis Public Schools

and Isaac Walker and Patrick Ryan, judgment was rendered against the said Board of President and Directors of the St. Louis Public Schools, and the said Board of President and Directors of the St. Louis Public Schools, having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed [directed] to the said Walker and Ryan, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington, the first Monday of December next: Now, the condition of the said obligation is such, that if the said Board of President and Directors of the St. Louis Public Schools shall prosecute said writ to effect, and answer all damages and costs if they fail to make good their plea, then the above obligation to be void, else to remain in full force and virtue.

THE BOARD OF PRESIDENT AND DIRECTORS OF THE S. LOUIS PUBLIC SCHOOLS.

[SEAL.] By J. D. BARLOW, *President.*
[SEAL.] CHARLES MEYER.
[SEAL.] JULIUS CONRAD.

Sealed and delivered in presence of—
GEO. B. KELLOGG.

133 On the back of said bond the following endorsement appears, to-wit:

This bond is deemed sufficient by the court, and the writ of error operates as a supersedeas in the case within named.

DAVID WAGNER,
Chief Justice of Supreme Court of Missouri.

STATE OF MISSOURI, *ss:*

I, O. T. Fishback, clerk of the Supreme Court, held at St. Louis, of the State of Missouri, certify that the above and foregoing is a full, true, and complete transcript of the record and proceedings in the above-entitled cause, as fully as the same remains of record and on file in my office.

In witness whereof, I hereunto set my hand and affix the seal of said court, at office, in the city of St. Louis, this 26th day of October, A. D. 1867.

[SEAL.] O. T. FISHBACK, *Clerk.*
Per E. O. McCARTY, *D'p.*

Cost of this transcript, $55 00. Paid by pl'ffs in error.
O. T. FISHBACK, *Cl'k.*
Per E. P. McCARTY, *D'p.*

134 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the Judges of the Supreme Court of the State of Missouri, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said Supreme Court before you, at March term thereof, 1867, between the Board of President

and Directors of the Saint Louis Public Schools, appellants, and Isaac Walker and Patrick Ryan, appellee's, a manifest error hath happened to the great damage of the said Board of President and Directors of the Saint Louis Public Schools as by its complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme court, this twenty-fourth of April, in the year of our Lord one thousand eight hundred and sixty-seven.

Issued at office, in the city of St. Louis, with the seal of the Circuit Court of the United States for the District of Missouri, dated as aforesaid.

[SEAL.]

BEN. F. HICKMAN,
Clerk C. C. U. S. Missouri District.

Allowed by—

DAVID WAGNER,
Presiding Judge Sup. C't, Mo.

[50-ct stamp.]

STATE OF MISSOURI, *ss:*

I, O. T. Fishback, clerk of the Supreme Court held at St. Louis, of the State of Missouri, in obedience to the mandate of the within writ, herewith transmit to the honorable Supreme Court of the United States, at Washington, a full, true, and complete transcript of the record and proceedings, with all things concerning the same, in the within entitled cause, as fully as the same remains of record and on file in my office.

In witness thereof, I hereunto set my hand, with the seal of said court hereto affixed, at office in the city of St. Louis, this 26th day of October, A. D. 1867.

[SEAL.]

O. T. FISHBACK, *Clerk.*
Per E. P. McCARTY, *D'p.*

[5-ct. stamp.]

Endorsed: Writ of error. The Board of President and Directors of the St. Louis Public Schools *vs.* Isaac Walker & Patrick Ryan. Filed April 24, 1867. O. T. Fishback, cl'k., per E. P. McCarty, dep.

4

Supreme Court of the United States.

DECEMBER TERM, 1868.—No. 149.

THE ST. LOUIS PUBLIC SCHOOLS,
Plaintiffs in Error,

vs.

ISAAC WALKER and PATRICK RYAN.

ERROR TO THE

Supreme Court of the State of Missouri.

M. BLAIR,
F. A. DICK,
Of Counsel for Plaintiff in Error.

J. L. Pearson, Printer, corner 9th and D streets.

IN THE

Supreme Court of the United States.

DECEMBER TERM, 1868.

No. 149.

THE ST. LOUIS PUBLIC SCHOOLS, PLAINTIFFS IN ERROR,

vs.

ISAAC WALKER AND PATRICK RYAN.

Error to the Supreme Court of the State of Missouri.

STATEMENT.

This was an action in ejectment brought in the St. Louis land court by the school board for a lot of ground in the city of St. Louis. The decision of that court was against the schools, and was affirmed by the supreme court of the state.

The plaintiffs derive title under the acts of Congress of the 13th of June, 1812, 26th May, 1824, and 27th January, 1831, and from the surveys made in pursuance of those acts by the Surveyor General.

The first section of the act of 13th June, 1812, (2 Stat., 748,) by its own terms confirms the claims of the inhabitants of the several towns and villages in Missouri "to the

town or village lots, out-lots, common field lots, and commons, in, adjoining, and belonging, to the several towns or villages," requiring, however, in order to a confirmation of the lots, that they should have been "inhabited, cultivated, or possessed prior to the 20th of December, 1803." In the same section it is made the duty of the principal deputy surveyor to survey, or cause to be surveyed, and marked (when the same has not already been done according to law) the out-boundary lines of the said several towns and villages, so as to include the out-lots, common field lots, and commons thereto respectively belonging."

The second section provides that—

"All town or village lots, or common field lots, included in such surveys, which are not rightfully owned or claimed by any private individual, or held as commons belonging to such towns or villages, or that the President of the United States may not think proper to reserve for military purposes, shall be, and the same are hereby, reserved for the support of schools in the respective towns or villages aforesaid: *Provided*, That the whole quantity of land contained in the lots reserved for the support of schools in any one town or village shall not exceed one-twentieth part of the whole lands included in the general survey of such town or village."

The first section of the act of the 26th of May, 1824, (4 Stat., p. 65,) makes it the duty of the owners of lots, which were confirmed by the act of the 13th of June, 1812, to prove within eighteen months after the passage of the act, before the recorder of land titles, the inhabitation, cultivation, or possession of their lots, and the boundaries and extent of each claim, so as to enable the Surveyor General to distinguish the private from the vacant lots appertaining to the said towns and villages.

The second section of this act makes it the duty of the Surveyor General, immediately after the expiration of the time allowed for the owners to prove the inhabitation, cultivation, or possession of their lots, to proceed, under the instructions of the Commissioner of the General Land Office, to survey, designate, and set apart to the said towns and villages, respectively, so many of the said vacant town

or village lots, out-lots, and common field lots for the support of schools in the said towns and villages, respectively, as the President shall not before that time have reserved for military purposes, and not exceeding one-twentieth part of the whole lands included in the general survey of such town or village.

The act of 27th January, 1831, (4 Stat., 435, and p. 14,) was passed for the purpose of transferring the title of the United States to the lots belonging to the several towns and villages, which had been acted upon by the act of 13th June, 1812. The first section relinquishes to the inhabitants of the several towns, or villages, all the right, title, and interest of the United States in and to the town or village lots, common field lots, and commons confirmed to them by the first section of the act of 13th June, 1812. The second section relinquishes all the right, title, and interest of the United States in and to the town or village lots, out-lots, and common field lots in the State of Missouri reserved for the support of schools in the respective towns and villages by the second section of the act of the 13th June, 1812, and provides, that the same shall be sold or disposed of or regulated for the same purposes, in such manner as may be directed by the legislature of said state.

By the act of 13th February, 1833, the legislature of Missouri incorporated the plaintiff, and vested in it the rights of property belonging to the schools in the city of St. Louis.—(p. 11.)

The town of St. Louis, as incorporated on the 9th of November, 1809, (p. 7,) and the outboundary of the town, as surveyed under the acts of 1812 and 1824, included the lot sued for. It was assigned to the schools by the Surveyor General by survey made in 1861.—(p. 8.)

The defendants were in possession under a patent to Joseph Papin, dated 15th June, 1826.—(p. 16.) This title the state court held to be unavailing; but combined with a confirmation to Joseph Brazeau, made by the act of

July 4, 1836, which was put in evidence *as an outstanding title*, (p. 20,) the state court held to be a sufficient defence to the action, although the lot in question was excluded from the survey of the court confirmed to Brazeau, and a certificate issued to the confirmee authorizing him to locate land elsewhere in lieu of the lot in question.—(p. 37.)

ARGUMENT.

On the facts in this case, and according to the views of the court below, there are two formal titles here for comparison; the elder title, owned by the plaintiff, being the grant of Congress, by act of 27th January, 1831; and the younger title, owned by the defendant, and resting upon act of Congress of July 4th, 1836. It is declared by the court below, that the elder title would prevail, were it not for the effect of the act of 1836 upon it, but that by virtue of this act alone, the younger title is the better.

I.—We will first proceed to examine the title of the plaintiff, for the purpose of ascertaining whether it does constitute a complete grant, so that the title to the land in question is to be considered as vested in the plaintiff, as of the date of January 27th, 1831. If so, it is immaterial what title or pretension the defendant may set up to the land, under the act of 1836.

It is not an open question, what is the effect of a grant, under the act of 1831. The Supreme Court of Missouri say, in Kissell vs. The Schools, 16 Mo., 553, 581:

"It can not be doubted that, under the acts of 1824 and 1831, and a designation, and setting apart, by the Surveyor General, of property to the schools, under the instructions of the Commissioner of the General Land Office, the whole title of the government, legal and equitable, passes. It is believed that such would be the effect under the act of 1824, but, in order to remove all doubt upon the question, and out of abundant caution, the act of 1831 *relinquishes the right, title, and interest* of the United States. When the document is produced which is required under these acts, the party has produced all that is necessary to show that the title of the government has passed. He need not go back to show the progressive steps in the title. This is a familiar rule applicable not only to patents, but to inferior evidences of title. All are

familiar with the repeatedly declared rule that, when a patent is produced all previous steps, required by law before its emanation, are presumed.—(Citing Polk's Lessee vs. Wendall, 9 Cranch, 87; and Patterson vs. Union, 11 Wheat., 383.) * * And when, in this case, the party produces the designation, and setting apart, to the use of schools of a particular lot, and the act of 1831 relinquishes the title of the United States, he has shown a legal title to the property, complete in form, and it devolves upon the opposing claimant to defend himself by showing a better title, or that that which is set up against him is void, a mere nullity."

This case was brought up, by writ of error, to the Supreme Court of the United States, and is reported in Kissell vs. The Schools, 18 How., 19, and was affirmed. This court say:

"On the 27th January, 1831, an act of Congress was passed, for the purpose of transferring the title of the United States, if any remaining, in the property belonging to the several towns and villages, embraced by the act of 13th June, 1812. * * The second section relinquishes all right, title, and interest of the United States in, and to, the town and village lots, outlots, and common field lots, reserved for the support of schools, by the act of 1812."—(p. 23.) "By the act of 1812, the towns acquired the promise of, and an imperfect title to, certain vacant lands that might be found to exist within an out-boundary survey; but the government reserved to itself the power to make this survey, and the board of school directors were therefore compelled to remain passive until it was completed, and the private claims within it ascertained, and until the United States designated the school lands comprehended within it. * * Our opinion is, that the school lands were in the condition of Spanish claims, *after confirmation* by the United States, without having established and conclusive boundaries, made by public authority, and which claims depended, for their specific identity, on surveys to be executed by the government. The case of West vs. Cochran, 17 How., 413, lays down the dividing line between the executive and judicial powers in such cases, that until a designation, accompanied by a survey or description, was made by the Surveyor General, the title attached to no land, nor had a court of justice jurisdiction to ascertain its boundaries."—(p. 25.)

There was, in evidence, a plat known as map X, certified to by the Surveyor General as designating the out-boundary lines directed to be run by the act of 13th June, 1812 (p. 23); and also a particular designation of the land in question, by the Surveyor General, within said out-boundary. The court were called upon to decide the legal effect of these documents, and say:

"We are furthermore of opinion, that the certificate of the Surveyor General above set forth, and which was accepted by the grantees, is *record evidence of title*, by the recitals in which the government and the board of

school directors are mutually bound and concluded. And this instrument, declaring that the land described *was reserved* for the support of schools, and the courts of justice having no power to revise the acts of the Surveyor General, under these statutes, it is not open to them to inquire whether the lands set apart were, or were not, lots of the description referred to in the statutes. The parties interested have agreed that this was a school lot, and here the matter must rest, unless some third person can show a better title."—(p. 25.)

The assignment to the schools was made on 15th June, 1843.—(p. 24.)

Prior to that time, and on 2d May, 1836, Duncan, under whom Kissell claimed, had been allowed to enter the land as public land, by virtue of a pre-emption claim, a title which, if valid under the laws of Missouri, would have sustained the action of ejectment; and this was the opposing title, and was prior in date to the act of assignment made by the Surveyor General. The court thus speak of the effect of such title:

"The conflicting titles both depend on acts of Congress, and are submitted to this court on the whole record, and which we are called on to compare, as was done in the cases of Mathews vs. Zane, 4 Cranch, 382; Ross vs. Borland, 1 Pet., 664; and Jackson vs. Wilcox, 13 Pet., 509. This follows from the instruction given, which maintains that the title of the board of public schools under the certificate of the Surveyor General, setting apart the land in dispute to the plaintiff below, was superior to the defendant's title under Duncan's entry with the register and receiver, and that therefore the jury was directed to find for the plaintiff. This general instruction raises the question, whether the land was subject to sale to one claiming a preference of entry under the pre-emption laws."

"To which it may be answered, that when the act of 1812 *dedicated* certain lands for the purposes of education to the use of the village of St. Louis, and the act of 1831 *vested the title* to these lands in the city, such lands were appropriated, and not subject to sale; they were beyond the reach of the officers of the government; nor could their action lawfully extend to them, with the exception that they could be ascertained and designated within the power reserved. Nor could Duncan be heard to say that he did not know that this parcel of land was reserved. The same excuse might be made, and with much greater claim to justice and propriety, by one who obtained an entry on land reserved from sale for military purposes, or some other public use, by the President; the fact of which reservation was hardly known beyond the general and local officers. Yet such entries have constantly been set aside as absolutely void, or as voidable by the department of public lands. The case of Wilcox vs. Jackson, 13 Pet., was an instance of the first kind where the entry was pronounced as absolutely void, it being in the notorious limits of a

reservation for military purposes; and so here the entry of Duncan was within the *notorious* limits of the city of St. Louis, according to the *record of incorporation* made by the court of common pleas for St. Louis county in 1809; and which city limits are recognized by the department of public lands, and by the out-boundary survey, as the *existing limits* when the act of 1812 was passed. This appears from the documents offered in evidence, on which the instruction to the jury was founded. We therefore concur with the views expressed by the state court, and those of the Commissioner of the General Land Office, that Duncan's entry was invalid."

This decision of the court as to the effect of the reservation of all lands within limits designated by the act of 1812 is conclusive in its bearing on the case at bar. The court hold that these limits were actually designated by the act of 1812, for it adopted the lines established by the act of incorporation of 1809, set out at page 7 of the record, thus: Beginning at Roy's mill on the river bank, thence running west a given distance, thence south to a given point, thence to the "Sugar Loaf," a well known mound, thence due east to the river, thence with the river to the beginning. Prior to 1812 the old board of commissioners, sitting under the acts of 1805 and 1807, had confirmed all claims within said limits brought before them based upon proper titles, which were meritorious in their opinion; and thus the bulk of such claims were disposed of. In 1812, to dispose of the residue of the public lands within said limits, the act of 13th of June was passed. With reference to the school title, it was urged by persons attempting to appropriate vacant lands within the town limits, that the act of 1812 only reserved for the schools what had been technically a lot under the former government. This question is stated in 16 Mo., 589, (Kissell's case,) thus: "The question when generalized is, whether all vacant ground found to be within the survey of the out-boundary was intended to be reserved for schools, or whether the reservation is confined to such ground as had, before the change of government, been actually designated, and in some mode separated from other property, so as to be a town lot, out-lot, or common field lot under the Spanish

government. In the case of Trotter vs. The Public Schools, 9 Mo., 69, it was distinctly held that the intention of Congress was to reserve all the vacant ground within the survey of the out-boundary." And the court proceed to state at length the grounds of their opinion for holding that the act of 1812 reserves to the schools all the land within the town limits, not given by the first section to private individuals. This was a vital point in the case; for the land in question was vacant ground not designated as a lot in Spanish times. Here was a precise and final decision, that after the act of 1812 there was no land within the limits of St. Louis, as incorporated in 1809, that was subject to disposition and sale as public lands of the United States. That act was a direct prohibition to executive officers not to attempt to dispose of such lands as public lands subject to sale.

And in Guittard vs. Stoddard, 16 How., 494, 510, the court say of the act of 1812, and its effect on St. Louis:

"These pretensions to town and village lots formed a residuum of a mass of rights titles and claims, which Congress was advised could be equitably and summarily disposed of by the abandonment of its own rights to the property, and a reference of the whole subject to the parties concerned."

All cases in which the act of 13th June, 1812, has been construed have treated that act as disposing of all the lands within the out-boundary of the town of St. Louis as it stood incorporated in 1809, as if there was at the passage of that act no claims pending before the board of commissioners within the town, which were reserved by the act of 3d March, 1811.

In Mackay vs. Dillon, 4 How., 421, 446, the court say of the effect of the survey of the out-boundary when run:

"The object of this proceeding, on part of the government, was to sever the confirmed claims in a mass from the remaining lands of the United States and others, outside of the boundary, and nothing more."

See also Trotter vs. Schools, 9 Mo., 69, 82, which says: "of what avail was this out-boundary line, unless every thing within it was disposed of," and to same effect is Kissell vs. Schools, 16 Mo., 553, and 18 How., 27.

II.—The plaintiffs' title is to be considered as originating in the act of 1812, as between the United States and the schools; and although the act of Congress might have been repealed, and the equity existing thus defeated; yet as the equity was ripened into a grant, the act of 1812 is to be treated as much a valid foundation of title as an entry allowed by a register and receiver. Congress never passed any law professing to dispose of these lands after the act of 1812 until the act of 26th of May, 1824, which is "*supplementary*" thereto. This act is passed not for the benefit of individual owners, but only to provide effective means of completing the existing rights of the public schools.—(4 How., 421, 446.) It directs private owners to prove up their lots, and the surveyor to designate the same, that he may thus be able "to distinguish the private from the *vacant* lots appertaining to said towns and villages." Next, the Surveyor General is directed "immediately after the expiration" of the term allowed for proving up the private lots, to survey, designate and set apart to the towns, so many of the vacant lots for the support of schools, as the President shall not within said eighteen months have reserved for military purposes; and also to survey the commons. This is what was directed to be done to supplement the act of 1812; and it seems to be a full and final disposition of all the lands within the out-boundary fixed by the act of 1812. This is the opinion of the Supreme court of Missouri in Kissell's case, 16 Mo., 581–2.

In Bowlin vs. Furman, 28 Mo., 427, which was an ejectment, Carondelet by quit-claim deed conveyed a vacant lot which it claimed under the act of 1812, and which was not set apart as such until after the deed was made. It was urged that until the assignment Carondelet had no title. The court hold otherwise, and say:

"In the case of Kissell, 18 How., 26, the Supreme Court of the United States expressed the opinion, that the school lands were in the condition of Spanish claims after confirmation, without having established conclusive

boundaries, made by public authority. If the school lands were in the condition of confirmed Spanish grants before a survey, surely no question can arise as to the right to dispose of them, and that a disposition of them in that state would carry any title the government would afterwards pass. The deed would convey the land, and the subsequent designation, like the survey of a confirmed grant, would point out the land designated. The doctrine of the enurement of a title acquired after the making of a conveyance, is not applicable to the circumstances of this case."

In Jones vs. Soulard, 24 How., 41, 64, the lot in question was not in existence in 1812, because it was far out from the river bank under water; and by accretion of the shore, as it had existed in 1812, this lot was made. The court treat the title as originating in the act of 1812, and to that date go back to ascertain the state of facts, and hold, that as the land was an accretion on the shore as it stood at that date, it was within the reservation to the schools. The plaintiff claimed the land under a title originating in 1820.

The court say:

"The controversy would be governed beyond dispute by the principles declared in Kissell vs. The Schools had this been fast land in 1812, *when the grant* to the schools was made."—(p. 64.)

And again the court say, p. 65:

"The *land grant*, to which the accretion attached, has nothing peculiar in it to form an exemption from the rule; it is an irregular piece of land, found vacant by the Surveyor General, and surveyed by him as a school lot in conformity to the act of 1812."—(p. 65.)

This language indicates that practically the act of 1812 was considered as appropriating the land.

III.—The validity of the title presented here by the school board against the entry of the land by Papin in 1826, has been settled by Kissell's case. The patent to Papin would not have been issued but for the entry allowed by the register and receiver. This patent must be held to be void at law.

Stoddard vs. Chambers, 2 How., 284.
Mills vs. Stoddard, 8 How., 345.
Bissell vs. Penrose, 8 How., 317, 332.
State vs. Ham, 19 Mo., 592, 602.

Barry vs. Gamble, 8 Mo., 88, 95.
Page vs. Scheibel, 11 Mo., 185.

Is the entry and purchase of the land in Papin's case any better than in the case of Duncan? The court in 18 How., p. 27, say *the land was "beyond the reach of the officers of the government,"* because it was reserved by act of Congress in 1812, according to the notorious limits of the town of St. Louis, as established in 1809 by public record of that date. The *reservation* was not dependent on the *survey* to be made of the out-boundary, because all the lands within those visible limits were reserved, independent of the survey. The patent issued for lands thus reserved was issued directly against this act of Congress of 1812.

IV.—And the court below, in 40 Mo., say that this reservation makes the school title better than the patent standing alone: thus—

"If the case stood upon the record only as a controversy between the entry and patent, and the school title (without reference to the act of 1836) the designation and survey to the schools could not be disputed by the defendants, for the reason that the land, as a lot not rightfully claimed by any private individual, would have been within the reservation for the schools; and the case would have fallen within the decision in like cases, as Kissell vs. The Schools, 18 How., 27; Jones vs. Soulard, 24 How., 41; Jackson vs. Wilcox, 13 Pet., 498; State vs. Ham, 19 Mo., 602."

Here the court admit the full application of the case of Kissell to the case at bar, and rely upon the act of 1836; not as a grant of the land in question to another; (for they also admit that there is no title in this case under the act of 1836 vested in any one;) but as a mere instrument of evidence, effective against the plaintiff's title in this wise; that it proves that the lot in question was, on 13th June, 1812, a lot "rightfully claimed by a private individual," namely, Brazeau. This is the inference drawn by the court, from the fact that in 1836 Congress confirmed the land in controversy to Brazeau, and Brazeau had claimed it prior to 13th June, 1812.

Now the act of 1836 makes no mention of lands in any locality, nor does it refer to the act of 1812; and the design of Congress was not by that act to make any declaration which should operate *merely as evidence against any prior title.* On the contrary, that act saves in both the 1st and 2d sections all previous titles. Before it was passed the school title was better, under existing acts of Congress, than the Papin patent; yet the court below hold that Congress, by law passed with no reference to the school title, has actually defeated it. And has done this too in favor of a title that before was absolutely void, and without merit: and although the act of 1836 says, in its *first* section—

"Saving and reserving however to all adverse claimants, the right to assert the validity of their claims in a court of justice."

And in the second section says—

"That if it shall be found that any tract confirmed as aforesaid, or any part thereof, had been previously located by any other person under any law of the United States, or had been surveyed and sold by the United States, this act shall confer no title to such lands in opposition to the rights acquired by such location or purchase."

What is the effect of the saving in the first section of "the right to assert the validity of their claims in a court of justice?" *Unless it means to assert them unimpaired by any effect and consequences from this act, it can have no force.* And the saving in the second section will apply to titles much inferior to the school title; and only by the most technical construction, and one opposite to the spirit of the provision, can it be held not to apply to the school title. It will never be intended that when the government has by one law granted lands to the schools, that by a later law it by implication intends to take them away and give them to a person claiming them under a void patent.

Again this construction of the act is directly contrary to the decision of this court in Stoddard vs. Chambers, 2 How., 284, 318, where a void patent was set up against a confirmation of 1836, and it was urged that the second sec-

tion of the act of 1836 above quoted saved and made valid the patent. To this the court answer, that the lands included in the patent were reserved from sale by the act of 1811, and this made the patent a nullity, and it was not therefore within the saving of the act of 1836. The court say, "no title can be held valid which has been acquired against law; and such is the character of the defendant's title." And in the later case of Mills vs. Stoddard, 8 How., 345, the court say—

"In the case of Stoddard vs. Chambers, this court held that a location under the law of the United States must be in conformity with it. But this, it is insisted, is not the true construction of the proviso, that under the law does not mean in pursuance of it, or in conformity with it; but an act assumed to be done under it. * The sense in which it is used in the proviso is, subject to the law."

And in the late case of Easton vs. Salisbury, 21 How., 426, the same doctrine is held, also in Bissell vs. Penrose, 8 How., 317, 332; see State vs. Ham, 19 Mo., 602.

V.—It has therefore been repeatedly and expressly decided and is conclusively settled by this court, that this act of 1836 does not validate a patent issued for land reserved from sale. Against all these decisions the court rely upon the case of Menard vs. Massey, 8 How., 293. There would seem to be a disagreement between that case and those above cited, but for the fact that what is said on page 310; that the confirmation of 1836 must yield to the previous patent, even if there had been a survey to designate the land confirmed; was mere dictum and a statement of *what the law would be had the facts been otherwise.* The case had been decided in favor of a patent because it embraced land *not reserved* from sale. This was the express decision of the court, *on the facts.* The court below has mistaken this dictum of the judge for the decision of the court. And in the case of the State vs. Ham., 19 Mo., 592, 602, the court cite the above decisions of this court, *Stoddard* vs. *Chambers*, Mills vs. Stoddard, and Penrose vs. Bissell, as settling the construction

of the act of 1836 as opposed to that adopted by the court in 40 Missouri.

VI.—Which ever title the court below may consider the valid one of the two set up by the defendants, it has only the act of 1836 to base either on; and it can not, on its own reasoning, make the two stand together on that act. It admits that the act of 1836 found the Papin title void. It holds first, that this law validates the patent. Then it must stand alone, for that extinguishes the Brazeau claim. But does the court so treat the Brazeau claim? On the contrary, it says that it may be used as an outstanding title, (p. 404,) and furthermore says, that it is to be held as relating back anterior to the act of 1812.

But this court has held that a confirmation of 1836 does not relate back at all.—(Les Bois vs. Brammell, 4 How., 449, 462; Menard vs. Massey, 8 How., 293, 303. See also Dent vs. Sigerson, 29 Mo., 489, 512, (1860.)

A confirmation under act of 4th July, 1836, was held to be inferior to a title under the 1st section of the act of 13th June, 1812, in the following cases besides many others not cited:

Guittard vs. Stoddard, 16 How., 494, 496.
Savignac vs. Garrison, 18 How., 136.
Chouteau vs. Eckhart, 2 How., 344.
Les Bois vs. Brammell, 4 How., 449.
Mackay vs. Dillon, 4 How., 421.
Soulard vs. Clark, 19 Mo., 580.

In Les Bois vs. Brammell, 4 How., 449, there was a Spanish claim surveyed and reserved as here, and it was confirmed by this same act of 1836. This embraced a part of the commons of St. Louis. The court say:

"It is insisted that the confirmation of 1836 established the *original validity* of Les Bois' title; that this stands as an adjudged and concluded fact which a court of justice cannot controvert, and the confirmation having operated on the concession of 1802, *therefore by relation* it overreaches the confirmations of the town concession of 1812 and 1831."—(p. 460.)

The court deny that this is so, and say that the bar which existed from 1828 to 1832 extinguished the Les Bois claim, and the grant of 1831 was final against her.

"In January, 1831, the city of St. Louis and other towns" applied to have their rights of common further confirmed and regulated, and an act of Congress was passed declaring that the United States do hereby relinquish to the inhabitants of the several towns of St. Louis, &c., all the right, title, and interest in and to the town and village lots," &c. *This law vested* in the city corporation the town common in fee simple and gave full power to the legislature of Missouri to incorporate it into the city. This is the same act, which in the 2d section, in same words, vested in the town the school lots. This case decides, that the survey was required to indentify the common, and that there could be no relation back of July 4, 1836, in the Les Bois title, and that the confirmation of 1836 was not evidence that the land was not common. It was the same proposition advanced there as to the commons which is here advanced as to the school lots. The same section of this act of 27th January, 1831, was the foundation of title in both cases, and the title to the two descriptions of lots, commons and school lots are *identical* in all essential points.

Again in Chouteau vs. Eckhart, 2 How., 344, the same titles were brought in conflict as to the St. Charles common. The syllabus says: "The act of 1812 * gave a title which is paramount to a title held under an old Spanish concession confirmed by act of 1836." This case was decided by the Supreme Court of Missouri in 1841, (7 Mo., 16,) and follows the earlier and first case of Bird vs. Montgomery, (6 Mo., 510,) decided in 1840, where the effort was to give the effect to a confirmation of 1836 to relate back to the old claim. The doctrine of the supreme court of the state as *then* settled has been followed always in the state courts and approved here. In Chouteau vs. Eckhart there was no United States survey of

the common in evidence; and the case was decided merely on the effect of the act of 1812 on all lands within the limits it fixes as against a confirmation of 1836. This case cited in 16 How., 508, Guitard vs. Stoddard.

In Dent vs. Sigerson, 29 Mo., 489, 512, 1860, the court say:

"It is no longer a question that confirmations under the act of July 4, 1836, do not relate back to the date of the concession, so as to exclude intermediate grants, but that they take effect only from the passage of the act."

In Menard's Heirs vs. Massey, 8 How., 293, opposed to the confirmation of 1836, was a valid entry and patent of 1826. To defeat this prior title it was urged that the confirmation of 1836 related back; thus, as stated by the court:

"And here the question arises whether Cerre's concession, on being confirmed by Congress in 1836, related back to its date of 1799, and overreached the United States title made to Massey and James. If it does so relate * the controversy is at an end; and as on this assumption the suit was brought, it becomes necessary to examine the question of relation of title."—(p. 303.)

The court then show that the original Spanish title was such as the courts could take no notice of, and depended entirely upon the action of Congress; and that although Congress had reserved them from entry and sale by executive officers, yet that the reservation ceased in 1828. This broke entirely the connection between the confirmation and the prior claim, and the title was to be considered as taken up anew and granted as of the date of July 4, 1836. As stated by the court thus:

"The title of Cerre having no standing in court before it was confirmed, it must from necessity take date from the confirmation, and cannot relate back so as to overreach the patents made in 1826."

Yet the court below say that the confirmation to Brazeau does relate back of 1831, and cites Stoddard and Chambers, 2 How., 284, and Landes and Brant, 10 How., 343. It was held in these cases that as between two parties claiming the benefit of the same confirmation it would recognize an assignment of the unconfirmed right made prior to the confirmation; but gave no effect whatever to the confirmation as against an adverse title.

VII.—The whole force of the argument of the court below is on the effect of the reservation of the claims filed before the old board of commissioners; and the defendants' title confessedly depends upon maintaining that the land continued to be reserved for Brazeau's claim after the act of 1812. But this we proceed to show was not the case. The occasion of the enactment of this reservation was the passage of the act of 3d March, 1811, Land Laws, 586, which authorized the sale of all lands within the territory of Louisiana, which had been previously surveyed as a preliminary act to a public sale thereof. Thus, section 10:

"The President of the United States is hereby authorized, whenever he shall think proper, to direct so much of the public lands lying in the territory of Louisiana, as shall have been surveyed in conformity with the 9th section of this act, to be offered for sale."

Excepting section 16, all salt springs, lead mines, and—

"Provided however, *that till after the decision of Congress thereon* no tract of land shall be offered for sale, the claim to which has been in due time and according to law, presented to the recorder of land titles, and filed in his office, for the purpose of being investigated by the commissioners appointed for ascertaining the rights of persons claiming lands in the territory of Louisiana."

The 9th section is:

"That for the disposal of the lands of the United States lying in the territory of Louisiana a land office shall be established," &c.

Congress did not intend by this act of March 3, 1811, to authorize the sale of lands within the limits of St. Louis, and therefore the proviso in the act is not to be considered as having in view the vacant lots within those limits. But if the proviso in the act of 1811 is applicable to lands within St. Louis, it only says that the President shall not sell those lands, and has no bearing on the construction of the act of 13th June, 1812, by which all the lands within the limits of St. Louis were disposed of in a mass by the act of 1812. Here was "*the decision of Congress*" as to that whole body of land, which finally disposed of all claims and of every foot of land within the town limits.

The record shows, page 25, that the old board rejected the claim on 19th August, 1811. Congress approved the decisions of the board as shown by the act of 13th June, 1812, disposing of all lands within the town (not before confirmed) as public lands. The report of the commissioners confirming claims is found in State Papers, title, Public Lands, vol. 2, page 562 to 603, (Duff Green's edition.) On page 377 is the report accompanying the rejected claims, dated 20th March, 1812. These rejected claims are set out from page 388 to 562. On p. 490 is Brazeau's claim, rejected. On 26th March, 1812, Thos. F. Riddick, clerk of the board of commissioners, in a communication to Mr. Morrow, chairman of Committee on Public Lands, in recommending an act to be passed disposing of unconfirmed claims, puts down under the 49th class—

"Villages, commons, common fields and lands adjacent given to the inhabitants individually for cultivation, possessed prior to 20th December, 1803. * * The 49th class will comprise nearly one-fourth of all the claims in Louisiana, and if *confirmed at once by the outer lines of a survey*, to be made by the principal deputy, would give general satisfaction, and save the United States a deal of useless investigation into subjects that are merely matters of individual dispute. The United States can claim no rights over the same, except a few solitary village lots and inconsiderable vacant spots of little value, which might be given to the inhabitants for the support of schools."—(Id., p. 379.)

And the report of Commissioner Penrose, dated May 29, 1812, (Id., p. 377,) says:

"Many lots have been confirmed or granted in all the towns. * * It would probably be best to confirm the town, generally to the inhabitants; and if there be any vacant lots, grant them for public schools."

The act of 1812, adopts the recommendation so made and the very words thereof, and disposes of all the lands in a mass. Is not this act a decision of Congress on all prior claims existing within the town of St. Louis. This act first protects all claims which "have been confirmed by the board of commissioners for adjusting and settling claims to land in the said territory."—(Sec. 1.) And grants the lots which have been "inhabited, cultivated

or possessed *prior to* 20 *December*, 1803," to those who so held them; and all not so held were "reserved for the support of schools."

The claim of Brazeau had been rejected by the commissioners, and was for lands within the town of St. Louis. This reservation to the schools finally disposed of the Brazeau claim. It is to be recollected that the act of 1811 in its whole scope could not embrace lands within the town of St. Louis, as that act was intended to provide for the sale of the great mass of public lands surveyed for that purpose, and never extended to small vacant places within towns or cities. There being no reservation of the lot in question for Brazeau's claim by the act of 1811 when the act of 1812 went into effect; and being extinguished by that act, if it had previously existed, there is nothing left to support the argument of the court below, that the lot now in controversy could not have been reserved to the use of the schools because it had been previously reserved for the claim of Brazeau.

On the argument of the court below the act of 1836 is *conclusive evidence* of a confirmation of the Brazeau claim under the act of 13th June, 1812. If it is evidence that it was rightfully claimed against the school title, (p. 398,) it must be also against a title under the 1st section of the act; and as the court on p. 400 makes it conclusive evidence, and under the act of 1812 the only evidence contemplated, is by parol proof, (Guittard vs. Stoddard, 16 How., 494; Clark vs. Soulard, 19 Mo., 570; Page vs. Scheibel, 11 Mo., 185,) it follows that a title given by the act of 1836 *must*, on the effect of proof, prevail over one given by the 1st section of the act of 1812.

In Ham vs. the State of Missouri, 18 How., 126, Ham relied on a confirmation by special act of Congress of 1828 and patent thereon in 1839, which was a mere relinquishment of the title of the United States, and saved previous titles.—(p. 129, 134.) The land had been claimed before the old board of commissioners, and was reserved

from sale by the 10th section of the act of March 3d, 1811, until the claim should be finally decided by Congress; and it was insisted that this reservation defeated the title of the state, which claimed the land as part of section 16 granted to it by act of Congress of 6th March, 1820, for the admission of the state into the Union. It was provided in this act that the state was to have section 16 for the use of schools, where the same had not been sold, "or otherwise disposed of;" and it was urged that the act of 1811 reserved this land, and therefore it was otherwise disposed of by the act of 1811, and consequently not within act of 1820. The proposition was thus stated in an instruction asked, and refused by the court:

"That the several acts of Congress, reserving section 16 for the support of schools, could only refer to the public lands proper, and could not attach to private claims, which had previous to such donation been claimed by individuals, and reserved by Congress to satisfy those claims."—(130.)

This instruction takes the ground, that as the land was reserved by the act of 1811 until Congress finally disposed of the private claim, the later reservation in the act of 1820 for the schools did not apply to it. This is the identical argument made by the court below in the case at bar, and upon the very same act of 1811. The court hold that the reservation in the act of 1811 applies only to lands of kind which the act authorized to be sold; and as section 16 was not authorized by the other sections of the act to be sold, it was not reserved by the 10th section.—(p. 131.) Thus:

"In comparing the enacting part of § 10, of the statute of 1811, with the proviso annexed thereto, it will strike the attention, that the restriction contained in the proviso has no connection with lands granted or donated for schools, but relates altogether to such lands as it was designed and declared should be sold at public auction to the highest bidder. Such certainly were not the lands, appropriated to a specific, ultimate and permanent purpose, namely the support of schools. As to these lands, sales and every other disposition inconsistent with such dedication were expressly inhibited."—(131-2.)

And aside from this literal meaning of the act the court hold that the reservation in the act of 1811 is a mere

temporary suspension of the lands from sale "for the purposes of investigation," and is not to be considered—

"A denial to Congress by itself of the right and power to sell or give, either upon satisfactory evidence of the invalidity of any opposing claim, or upon considerations of public policy, the land embraced within the suspension."

Mr. Justice Nelson, in a separate opinion, placed his affirmance of the decision below on the ground, that there was a final decision by Congress on the claim reserved, when in confirming it, it gave a mere relinquishment, which was not to prejudice the rights of third persons. In the report of this case, (State vs. Ham,) 19 Mo., 592, the effect of the reservation by the act of 1811 is critically examined, and the court say;

"This was only a reservation from sale, of land claimed before the board of commissioners, until the final action of Congress thereon. It conferred no right; it acknowledged no right. It imposed no obligation upon the government. It was simply a direction to its officers to refrain from selling land covered by claims, which had been filed according to law, for adjudication. A sale by the executive officers of the government, contrary to the reservation, would be, if not protected by subsequent legislation, merely void.—(Stoddard vs. Chambers, 2 How., 313, &c.) But the title to land being still in the United States could be passed by the government to any person, for any consideration, notwithstanding."—(p. 602.)

This case is substantially the same as the case at bar.

Relation in Plaintiffs' Title.

VIII.—Is the plaintiffs' title to have effect from the date of the act of Congress of 1831, or is it to take effect from the date of the survey?

It is said that the Brazeau title has a technical advantage in a prior survey. If the Surveyor General should intentionally, and for any purpose of his own, postpone a survey under the act of 1831, until he had surveyed the same land under the act of 1836, for the courts to hold that this would give title according to the priority of the survey, would be to execute the will of the agent rather than of the government.

In Ross vs. Borland, 1 Peters, 655–664, the court say:

"In the action of ejectment they look beyond the grant, and examine the progressive stages of the title, from its incipient state, whether by warrant, survey, entry, or certificate, until its final consummation by grant; and if found regular and according to law in these progressive stages, the grant is held to relate back to the inception of the right, and to have dignity accordingly."

In Mitchell vs. Handfield, 33 Mo., 431, there was a survey to the schools in 1845, and the adverse title was an old board confirmation with survey in 1852. The court held that the younger survey related back to its prior confirmation, and cut out the prior survey on a younger confirmation.—(See also Stark vs. Starr, 6 Wall., 402.)

IX.—This Land in Litigation for Twenty-five Years.

The Papin title has been in litigation for more than twenty-five years in the state courts, which have never made any actual decision in relation thereto.

In Sarpy vs. Papin, 7 Mo., 503, (in 1842,) Papin brought ejectment on this patent. The defendant relied upon the Brazeau and Devolsey confirmations of 1836.

The court held, (1st) that the act of 1836 excepted the patent, although it might be invalid; and (2d) held that the land was not reserved from sale at the time the patent was issued. It was intimated in the argument that there might be an outstanding title in the schools.

"Letters from the Commissioner of the General Land Office, directing the register of the land district in which the land was located, to reserve from sale all lands made fractional by unconfirmed private land claims, were also read in evidence. These letters were dated in September, 1823, and were found on file in the records of the land office at St. Louis."

In Barry vs. Gamble, 8 Mo., 88–95, (1843,) the court say that, in Sarpy vs. Papin:

"This court held that when an entry of land had been made at the time when by law there was a reservation from sale, and a patent issued, that a party should not be permitted to go behind the patent to show such irregularity. It is to be observed, however, that the opinion of the court in that case was founded on a mistaken assumption of the statute law. * * * The court proceeded on the assumption that Congress had taken off the reservation and declared the land public land, and consequently subject to be sold. That opinion, therefore, so far as that point is concerned, is entitled to no weight."

In Papin vs. Hines, 23 Mo., 280, (1856,) the plaintiff claimed under the Brazeau confirmation of 1836. The defendant relied on the Papin patent. To this the plaintiff replied, in argument, that the patent was void because the land was within the town of St. Louis, and therefore never subject to sale. The court say, this is not a defence as between these parties, and as the only titles before it are the confirmation of 1836 and the patent, the court hold the patent better, as decided in Menard vs. Massey, 8 How., 293. This is from misunderstanding Menard's case, as shown elsewhere.

In Cabanne vs. Walker, 31 Mo., 274, (1860,) the plaintiff claimed under confirmation of 1836 to Devolsey. The defendant relied on the Papin patent, and gave in evidence also the Brazeau confirmation of 1836. It was urged by plaintiff that the patent was void, because the land was reserved from sale by the act of 1812. If so, say the court, yet the plaintiff can have no title under the confirmation of 1836 because of grant by the act of 1831 to the schools. On this state of title, the court say they will decide nothing further than that "the defendant's possession was a defence to the action." "We do not see how the patent of the defendant is made dependent on the act of July 4, 1836, for its validity. If that patent is within the meaning of the second section of that act, it is then recognized as a valid instrument from its date. We are not to be understood as expressing an opinion on the question, whether the patent of the defendant conferred on him any title. We do not consider that as involved in the case. As the matter stood, we conceive that defendant's possession was a defence to the action."

In Papin vs. Ryan & Walker, 32 Mo., 21, (1862,) which was ejectment, the plaintiff (Papin) relied on the confirmation of 1836 to Brazeau.

The defendant offered no evidence, but objected to the confirmation of 1836 as no grant to plaintiff, because the land was within the limits of the town of St. Louis,

(citing the above case of Cabanne vs. Walker, 31 Mo., 274.)

The court say, the same claim was before the court in Papin vs. Hines, 23 Mo., 275. As the defendant gave no evidence, and as the confirmation of 1836 is prima facie title, the plaintiff must recover under it. The defendants urge that the lands were reserved for the schools. But the school title cannot avail the defendant because he is a trespasser, and it is not given in evidence.

A recapitulation of these decisions shows that in Sarpy vs. Papin, 7 Mo., 503, in 1842 the court held the patent a better title than the confirmation, on the ground that it understood by act of Congress the sale of the land was authorized. Plaintiff relied on the patent. In 1843, in 8 Mo., 95, the court say there was no such statute, and that the opinion in 7 Mo., 503, was based on a mistake, and is entitled to no weight.

In Papin vs. Hines, 23 Mo., 280, the plaintiff relied on the confirmation, and defendant on the patent; and the court held the patent the better title on the ground that the exception in the act of 1836 validated it, as supposed to have been decided in Menard vs. Massey, 8 How.

In Cabanne vs. Walker, 31 Mo., 274, the plaintiff again relied on the confirmation of 1836, and the defendant on the patent. The court decline following the previous decision of Papin vs. Hines, and decide in favor of defendant only on the ground of possession. This seems like repudiating the previous decision. In Papin vs. Ryan & Walker, 32 Mo., 21, the plaintiff again relied on the confirmation, and recovered because defendant did not introduce any title.

In the case of the Schools vs. Walker, 40 Mo., 403, the court cite Papin vs. Hines, 23 Mo., and Papin vs. Ryan, 36 Mo., as both holding the patent validated by the confirmation of 1836. But in Papin vs. Ryan the patent was not in evidence, and there was a recovery in favor of the title under the confirmation. Again, on p.

404, of 40 Mo., the court rely on Cabanne vs. Walker, 31 Mo., as so holding; but on the contrary the court in that case refuse to so decide.

The court not only misrecite the previous decisions, but seem unaware that in the case above cited from 8 Mo., 95, and in the case of the State vs. Ham, 19 Mo., 602, and 11 Mo., 185, the same court held such patent to be void. Judge Gamble who rendered the decision in this last case and who argued the following cases cited by him in his opinion, says—

"A sale by the executive officers of the government, contrary to the reservation, would be, if not protected by subsequent legislation, merely void."—(Citing Stoddard vs. Chambers, 2 How., 313; Mills vs. Stoddard, 8 How., 345; Bissell vs. Penrose, Ib., 317.)

X.—The court which tried the case refused every instruction asked, and gave one, which declared that the assignment to the schools was a prima facie title, but was inferior to the confirmation of 1836 to Brazeau.

The court denied instructions asked, declaring void the patent to Papin (p. 56):—that there was no evidence tending to show that the land was rightfully claimed by Brazeau on 13th June, 1812, within the operation of the act of that date; (p. 56) that Soulard's Spanish survey does not, but that the United States survey, No. 3,078, does indicate the land to which the confirmation of 1836 attaches; and that said survey and the exception therein are conclusive upon Brazeau.

The single instruction given by the court states the law as asked by the defendant, and adds as a feature in the defendant's case the *concession* to Brazeau of 1799, (p. 29 of Record,) the Spanish survey of which was made 21st August, 1803.—(p. 32 of Record.) The court say if the land was included in that *concession*, and was presented for confirmation before the old board, and confirmed in 1836 by the new board, it is a better title than that given by the act of 1831. This survey of Soulard, extended far into the St. Louis common, and adjoins and is of the

same series as the surveys made in Les Bois vs. Brammell, 4 How., and Mackay vs. Dillon, 4 How., 421, of the private claims interfering with the commons. The only ground upon which the early cases of Chouteau vs. Eckhart, Les Bois vs. Brammell, Mackay vs. Dillon, Soulard vs. Clark, and very many others relying upon a confirmation of 1836, were rested as better than older confirmations, was that the original concessions were valid, and being finally recognized by the United States, their original validity was continued or restored.

See this point made in Chouteau vs. Eckhart, 2 How., at p. 362, in the argument, thus: "that the title to the plaintiff in error to the tract *granted* to him on 25*th November*, 1800, by the Lieutenant Governor of Louisiana, is protected and guaranteed by the treaty of cession, and has been *specifically confirmed* by the act of 4th July, 1836." Mr. Justice Catron enters into an elaborate argument to prove that the plaintiff's claim "not having been perfected before the change of government," could not have the standing or effect claimed for it in the courts of the United States. The syllabus says, that the act of 1812 "gave a title, paramount to a title held under an *old Spanish concession*, confirmed by Congress in 1836."

In Les Bois vs. Brammell, 4 How., 449, Mr. Justice Catron again elaborates the same view and holds, as expressed in the syllabus that "land held under a *concession and survey* was not finally severed from the royal domain, and converted into private property," and therefore the concession had no standing in a court of justice even after the confirmation.

Recapitulation.

I.—The plaintiffs' title is complete under the acts of Congress of 13th June, 1812, 26th May, 1824, and 27th January, 1831, and is a final and valid grant against the government and all persons not holding a better title from the government.

Kissell vs. Schools, 18 How., 25, and 16 Mo., 553.
Jones vs. Soulard, 24 How., 41.
Trotter vs. Schools, 9 Mo., 69.

II.—The certificate of the Surveyor General is evidence of the facts therein recited by which the government and school board "are mutually bound and concluded,"

"And as this instrument declares that the land described was reserved for the support of schools, the courts of justice have no power to revise the acts of the Surveyor General, as respects the school lands, and it is not open to inquire whether the lands set apart were or were not lots of the description referred to in the statutes."

Kissell vs. Schools, 18 How., 25.
Kissell vs. Schools, 16 Mo., 553.
Jones vs. Soulard, 24 How., 41.

III.—A confirmation of 1836 is a title only from that date; and cannot relate back. Through the failure of Brazeau to prosecute his claim under the act of 26th May, 1824, in the United States District Court, it stood barred from the 26th May, 1829, and so remained barred until the act of July 9th, 1832, was passed.—(4 How., 458.) This gap entirely severed the connection between the claim as reserved by the act of 3d March, 1811, and the confirmation by the new board sitting under the act of 1832, and whose recommendations were confirmed by act of July 4th, 1836. During that interval, by the cessation of the reservation, Brazeau's claim was extinguished, so that the grant to the town of St. Louis of 27th January, 1831, was clear of all adverse claims. This is precisely what was held in Les Bois vs. Brammell, 4 How., as between the town title to the commons and the confirmation of 1836. Therefore the school title must be superior, for there is the same grantor, grantee and instrument of grant. There being no claims existing but those of the United States and the schools in 1831, the action of the Surveyor General setting apart the land to the schools, is final and conclusive evidence of title.

Kissell vs. Schools, 18 How., 27.
Stark vs. Starr, 6 Wallace, 402.

IV.—There was no reservation of any land within the town of St. Louis as incorporated in 1809 under act of March, 1811. That act was not intended to apply to lands within incorporated towns.

Ham. vs. State of Missouri, 18 How, 126, & 19 Mo., 592.
Kissell vs. Schools, 18 How., 27.

V.—Even if the Brazeau claim had been reserved by the act of 1811, such reservation ceased with the act of 1812, which was a final decision against that claim in favor of the schools; and the acts of 26th May, 1824, and 27th January, 1831, were also final decisions to the same effect.

Kissell vs. Schools, 18 How., 27.
Ham. vs. Missouri, 18 How., 126.
Trotter vs. Schools, 9 Mo., 69.

VI.—The patent issued to Papin, under which the defendants Ryan & Walker claim, was absolutely void when issued, for the reason that the land never was public land that was subject to sale by the executive officers of the government, because within an incorporated town, (19 How., at page 26,) (and also instructions of the Commissioner of the General Land Office—found at page 504 of 7 Missouri Reports,) and 2d, also because by the act of 13th June, 1812, it was reserved especially for the support of schools.

Kissell vs. Schools, 18 How., 27.
Wilcox vs. Jackson, 13 Pet.
Jones vs. Soulard, 24 How., 41.
Ham vs. Missouri, 18 How., 126; 19 Mo., 592.
Kissell vs. Schools, 16 Mo., 553.
Trotter vs. Schools, 9 Mo., 69.

And 3d, by the act of 26th May, 1824, it was made the duty of the Surveyor General eighteen months thereafter

"immediately" to set apart the vacant lots to the use of the schools. This was before the entry and patent.

VII.—The act of 1836 did not in confirming the Brazeau claim make valid the void patent to Papin.

Stoddard vs. Chambers, 2 How., 284.
Mills vs. Stoddard, 8 How., 345.
Bissell vs. Penrose, 8 How., 317, 332.
The State vs. Ham, 19 Mo., 592, 602, & 18 How., 126.
Barry vs. Gamble, 8 Mo., 88.
Page vs. Scheibel, 11 Mo., 167, 185.

VIII.—The saving and exceptions in the 1st and 2d sections of the act of 1836 apply to the school title.

Le Beau vs. Gaven, 37 Mo., 556.

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March, 1869.